

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL.,
APPELLANTS,

vs.

FROZEN FOOD EXPRESS, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL.

No. 163

INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

FROZEN FOOD EXPRESS, ET AL.

No. 164

AKRON, CANTON AND YOUNGSTOWN RAILROAD
COMPANY, ET AL., APPELLANTS,

vs.

FROZEN FOOD EXPRESS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS.

FILED JUNE 17, 1955

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**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS**

FROZEN FOOD EXPRESS, Plaintiff,

VS.

**UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION**

**ORIGINAL BILL OF COMPLAINT IN CIVIL ACTION No. 8396—
Filed August 2, 1954**

To the said Honorable Court:

Frozen Food Express, a corporation, complainant, files this its Original Bill of Complaint against the United States of America and the Interstate Commerce Commission, and says that this action is prosecuted for the following purposes:

(1) To enjoin, annul and set aside that certain Report and Order of the Interstate Commerce Commission of July 13, 1954 ordering complainant to cease and desist from the performance of transportation of commodities as a common carrier by motor vehicle in interstate or foreign commerce, said transportation consisting of fresh and frozen meats, meat products and dressed poultry from, to and between points in the United States, which Report and Order is attached hereto and made a part hereof as Exhibit "A".

(2) To enjoin the Interstate Commerce Commission from interfering or from any manner interrupting the operation of the plaintiff transporting fresh and frozen meats, meat products and dressed poultry from, to and between all points within the 48 states and the District of Columbia, such items being agricultural commodities (not including manufactured products thereof).

Jurisdiction is invoked under 28 U. S. C. A. 1337, 1398 and 2321, et seq., 5 U. S. C. A. 1009, all as will more fully appear hereinafter.

I

Frozen Food Express is a Texas Corporation duly organized and qualified to do business in the State of Texas and with a place of business in the State of Texas at Houston, Texas in the County of Harris in the Southern District of Texas.

[fol. 3] The Interstate Commerce Commission is a Federal administrative agency existing under the laws of the United States and by virtue of the Interstate Commerce Act as amended and has jurisdiction over the regulation of the transportation of property for hire moving via common carrier motor carrier in interstate or foreign commerce over public highways to the extent specified in the Interstate Commerce Act, Parts One and Two (49 U. S. C. A. 5, 301-325, inclusive).

II

Frozen Food Express is the owner and holder of Certificate of Public Convenience and Necessity No. MC-108207 and issued by the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, Parts One and Two, authorizing the transportation of certain commodities between points and places in the States of Arizona, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, Texas and Wisconsin. (A copy of the Certificate is attached hereto and identified as Exhibit B and made a part hereof.)

III

Frozen Food Express, in addition to the transportation of commodities as authorized by the Interstate Commerce Commission as a common carrier motor carrier, is transporting and has been transporting since the enactment of Part Two of the Interstate Commerce Act, Title 49, Paragraph 303(b)(6) certain commodities consisting of agricultural commodities (not including manufactured products thereof) between various points in the United States. That on such occasions when the vehicles of complainant are transporting agricultural commodities that such motor vehicles are not used in carrying any other property or pas-

sengers for compensation. That included in such transportation, complainant has transported fresh meat, frozen meat, fresh dressed poultry, frozen dressed poultry, it being the interpretation of the complainant that said commodities are within the intendment of the broad exemption of agricultural commodities (not including manufactured products [fol. 4] thereof) as specified in the Act. That such transportation has been performed by it for hire by motor vehicle over the highways of various states in the United States of America moving from Fayetteville, Arkansas to points and places in the State of Ohio, from Bentonville, Arkansas to Louisville, Kentucky, from Bentonville, Arkansas to points and places in California, and from Fort Worth, Texas to Toledo, Ohio.

Frozen Food Express has not sought any authority from the Interstate Commerce Commission to transport such commodities for hire for the reason that such commodities are exempted under the provisions of the Interstate Commerce Act, Part Two (supra).

IV

That notwithstanding the plain and unambiguous language of the Interstate Commerce Act, Title 49 Section 303(b)(6), in exempting agricultural commodities (not including manufactured products thereof) the Interstate Commerce Commission has issued its Order complained of herein (Exhibit "A"), ordering the complainant Frozen Food Express to cease and desist from all motor carrier operations in interstate or foreign commerce in the transportation of fresh and frozen meats and fresh and frozen dressed poultry, and as a result of such finding and Order of the Interstate Commerce Commission, complainant is deprived of its statutory right granted under the exemption of the Interstate Commerce Act, Part Two (supra) to transport agricultural commodities (not including manufactured products thereof) and that said finding and Order of the Commission is arbitrary, unreasonable, capricious and unjust to complainant and constitutes an abuse of the Interstate Commerce Commission's discretion and transgression of its statutory power and authority, and the said

finding and Order issued by the Interstate Commerce Commission is unlawful and void for the following reasons:

1. The Interstate Commerce Commission being a Federal administrative agency created by the laws of the United States has jurisdiction over the regulations of transportation only as authorized by the Congress of the United States and that the Congress of the United States has specifically exempted agricultural commodities including fresh and frozen meats and fresh and frozen dressed poultry from the jurisdiction of the Interstate Commerce Commission and, therefore the Interstate Commerce Commission has no legal [fol. 5] right, power and authority to exercise any jurisdiction or supervision over complainant while transporting agricultural commodities (not including manufactured products thereof) when such vehicles are not being used in transportation of other property for compensation.

2. The decision and Order of the Interstate Commerce Commission in ordering complainant to cease and desist from all motor carrier operations in interstate or foreign commerce of the character found in said Report (which includes fresh and frozen meats and fresh and frozen dressed poultry) until appropriate authority is obtained constitutes an unlawful usurpation of the power and authority of the Congress of the United States for the reason that such commodities constitute agricultural commodities (not including manufactured products thereof) and the Congress of the United States has specifically exempted such commodities from the Certificate provisions of the Interstate Commerce Act.

3. The decision and Order complained of herein is in effect an abrogation of the complainant's rights to transport certain agricultural commodities (not including manufactured products thereof) under the provisions of Section 303(b)(6).

4. The Order of the Interstate Commerce Commission and the findings of the Commission that fresh and frozen meats and fresh and frozen dressed poultry are not agricultural commodities (not including manufactured products thereof) are contrary to the lawful authority of the Interstate Commerce Commission.

5. That such findings and Order complained of constitute an unwarranted and unlawful invasion of the power and authority of the Congress of the United States in that such finding and Order repeal and modify and restrict a provision of law passed by the Congress of the United States and that the Interstate Commerce Commission is without such power and authority under the Interstate Commerce Act.

V

Notwithstanding the express exemptions exempting agricultural commodities (not including manufactured products thereof) from the jurisdiction of the Interstate Commerce Commission, the Commission has ordered complainant to cease and desist its operation in interstate or foreign commerce in the transportation of fresh and frozen meats and fresh and frozen dressed poultry, and the Commission is [fol. 6] threatening to enjoin complainant's transportation of such exempted agricultural commodities (not including manufactured products thereof) and is threatening to file complaints against complainant, and unless this Honorable Court enjoins and restrains the Interstate Commerce Commission from enforcing its findings and Order complained of herein (Exhibit "A"), the complainant will be deprived of the right granted to it under the laws of the United States and that complainant should have such relief to which it is entitled in law and in equity.

The complainant has exhausted its administrative remedies and is, therefore, making this appeal to review and permanently enjoin and set aside the final Order of the Interstate Commerce Commission.

Wherefore complainant prays that respondent be cited to appear and answer herein and that upon final hearing hereof the Order and findings (Exhibit "A") be annulled, enjoined, cancelled and set aside and that the Interstate Commerce Commission and the United States of America be permanently enjoined and restrained from enforcing said findings and Order, and that the respondent be permanently and perpetually enjoined and restrained from interfering with the complainant's transportation of fresh and frozen meats and fresh and frozen dressed poultry in interstate and foreign commerce (when complainant is not using its

motor vehicles in carrying any other property for compensation), and that complainant have all other and further relief, at law or in equity to which it may be entitled, and for its costs.

Phinney and Halman, Carl L. Phinney, Leroy Hallman, 617 First National Bank Building, Dallas, Texas, by Carl L. Phinney, Attorneys for Complainant, Frozen Food Express.

[fol. 7] EXHIBIT "A" TO BILL OF COMPLAINT
INTERSTATE COMMERCE COMMISSION

No. MC-C-1605

EAST TEXAS MOTOR FREIGHT LINES, INC., et al.

v.

FROZEN FOOD EXPRESS

Submitted April 2, 1954 Decided July 13, 1954

Defendant's unauthorized operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry found not to be within the exemption provided in section 203(b)(6) of the Interstate Commerce Act and to be unlawful. Defendant ordered to cease and desist from performing the service found to be unlawful.

Rollo E. Kidwell, David G. Macdonald, Francis W. McInerney, and Lee Reeder for complainants.

Clarence D. Todd, Dale C. Dillon, and Charles F. Riddle for intervener in support of complainants.

Carl L. Phinney and Leroy Hallman for defendant.

Report of the Commission

By the Commission:

No oral hearing has been held in this proceeding, and it has been submitted on a stipulated statement of facts. In view of the lack of any dispute as to the facts, the clarity of the issues, and the desirability of an early decision, no report of an examiner is deemed necessary.

By complaint filed December 23, 1953, East Texas Motor Freight Lines, a corporation of Dallas, Tex., Gillette Motor Transport, Inc., of Dallas, and Jones Truck Lines, Inc., of Springdale, Ark., hereinafter called East Texas, Gillette, and Jones, respectively, all motor common carriers, alleged that the defendant, Frozen Food Express, of Dallas, a corporation, is, and has been, engaged in the transportation of fresh and frozen meats, meat products, and dressed poultry [fol. 8] try from, to, and between points not authorized in any certificate held by it. Complainants seek an order requiring defendant to cease and desist from the alleged unauthorized and unlawful operations and such other and further relief as may be considered proper in the premises. By order entered March 4, 1954, the Irregular Route Motor Common Carrier Conference of American Trucking Associations, Inc., hereinafter referred to as the Conference, was permitted to intervene in support of complainants.

Complainants transport general commodities over regular routes in an area which includes Illinois, Missouri, Oklahoma, Tennessee, and Texas. Defendant is authorized to transport frozen foods, fresh foods, including fruits and vegetables, packing-house products, and dairy products, from, to or between specified points in Arkansas, California, Illinois, Louisiana, Kansas, Michigan, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin. It admits that it has, and now is engaged in the transportation of fresh and frozen meats and fresh and frozen dressed poultry from and to points not authorized by its certificates. Following is a list of typical shipments transported by defendant beyond the scope of its certificates during September, October, and November, 1953:

[fol. 9]

Commodity	Weight Pounds	Origin	Destination
Beef and mutton	26,325	San Antonio, Texas	Cincinnati, Ohio
Cut-up poultry	25,674	Fayetteville, Ark.	Norwood, Ohio
Dressed poultry	25,276	Bentonville, Ark.	Dayton, Ohio
Dressed poultry	23,890	Bentonville, Ark.	Columbus, Ohio
Fresh beef	23,061	Fort Worth, Tex.	Columbus, Ohio
Frozen turkeys	23,900	Bentonville, Ark.	Turlock, Calif.
Veal trimmings	29,967	Fort Worth, Tex.	Toledo, Ohio
			Louisville, Ky.
			Cincinnati, Ohio

In each such instance no commodity other than that indicated was transported at the same time in the same vehicle.

Defendant, relying upon *Interstate Commerce Commission v. Kroblin*, 113 F. Supp. 599, which was affirmed on appeal, — F. 2d —, contends that the operations complained of come within the exemption provided by section 203(b)(6) of the Act, and may be performed without specific authority from this Commission. Section 203(b)(6), so far as here material, provides as follows:

Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of *ordinary livestock*, fish (including shell fish), or *agricultural (including horticultural) commodities (not including manufactured products thereof)*, if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * * (Italics supplied.)

We have involved here the transportation of two types of commodities, namely, (1) fresh or frozen dressed poultry and (2) fresh or frozen dressed meat or, more precisely, those packing-house products derived from the slaughter [fol. 10] of ordinary livestock. Although, as will be seen, we conclude that neither type of commodity is within the exemption provided by the statute, the reasoning in support of such conclusion differs as to the two classes of commodities. Obviously the exemption, if any, of vehicles used in the transportation of dressed poultry depends upon whether that commodity is an "agricultural commodity" or a "manufactured product thereof." In the case, however, of dressed livestock or those packing-house products derived from the slaughter of livestock, that issue is not in our opinion controlling.

As originally enacted in 1935, section 203(b)(6) exempted transportation performed in "motor vehicles used exclusively in carrying livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof)." In 1938 the section was amended to read

"motor vehicles used in carrying property consisting of livestock, fish (including shellfish), or agricultural commodities (not including the manufactured products thereof) if such motor vehicles are not used in carrying any other property or passengers for compensation." In 1940 the word "livestock" in the exemption was modified to read "ordinary livestock," a term previously defined in section 20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special users."

Thus, from the beginning of motor carrier regulation by us an exemption has been provided in section 203(b)(6) of vehicles used in the carrying of "livestock" or "ordinary [fol. 11] livestock," and also in the same section an exemption of vehicles used in the carrying of "agricultural commodities." The latter exemption does not duplicate the former nor did it establish a second exemption of vehicles used in carrying ordinary livestock. On the other hand, it must be concluded that the exemption of vehicles used in carrying ordinary livestock ends upon the slaughter of the livestock when it loses its identity as livestock, and that there was no intent in the same section to provide a further or second exemption of vehicles carrying the packing-house products which result from the slaughter, on the theory that such commodities are "agricultural commodities." A Congressional intent, had there been one to exempt the transportation not only of ordinary livestock but also of the products of the slaughter thereof, would unquestionably have been so simple to state that the failure to do so negatives any such strained construction of the language actually used to accomplish that end. This conclusion conforms to that made by us in *Determination of Exempted Agricultural Commodities*, 52 M.C.C. 511, hereinafter referred to as the *Exemption case*.

The record herein, apparently for the purpose of demonstrating that fresh meat is in any event a "manufactured product" of an agricultural commodity, describes the slaughtering processes at some length. This evidence as it relates to the processing of livestock is beside the point if our conclusion is correct that the exemption of vehicles used in carrying "agricultural commodities" does not duplicate the exemption of vehicles used in carrying "or-

[fol. 12] dinary livestock." Nevertheless we shall review it briefly and later we shall refer to other evidence designed to show that fresh and frozen meats which are the products of the slaughter of ordinary livestock are, in any event, manufactured products.

Cattle are raised on farms and ranches and generally are shipped alive by the growers to stockyards operated by, or in conjunction with, meat packing companies. The slaughtering process begins only after the animals reach the stockyards and consists of (1) holding the cattle in pens, including resting, watering, and feeding, (2) killing, including knocking, shackling, hoisting, and bleeding, (3) skinning and cutting, (4) washing, (5) stamping, scaling, and grading, (6) hot clothing, and (7) chilling. In processing the animals for slaughter, various mechanical and other aids are employed, such as pens, runways, pulleys and chains, overhead conveyors, electric saws, mechanical slides, water heaters, ribbon branders, and chilling systems entailing the use of brine tanks, pumps, and related gear.

Chickens and other poultry intended to be used for food are raised on farms or by so-called "commercial broiler houses." Poultry is raised on farms principally for the production of eggs. Their sale for killing is largely incidental to that production. The commercial broiler houses, on the other hand, are primarily engaged in producing poultry for food purposes. From three to four lots are usually raised and marketed during the course of a year. In most instances, chickens, turkeys, and other poultry are shipped alive from the farm or commercial broiler house [fol. 13] to the processing plant. Only a small percentage of the total number raised are killed and processed by the grower. The principal exceptions are the Long Island, N. Y., duck industry and certain growers' cooperatives, which carry on all operations incidental to the marketing of dressed poultry including the growing, killing, and processing.

In the packing plants, the birds are first placed on an endless chain and then carried by the chain through the various stages of processing, which include killing, picking, pinning, singeing, cropping and venting, washing, chilling, eviscerating, packaging, and freezing. Picking is done

both by machinery and by hand, the mechanical picker consisting of revolving drums equipped with rubber fingers. In some plants the removal of feathers is accomplished by the use of hot wax. The usual method of chilling is to place the carcasses in metal baskets which are then submerged in tanks of ice water long enough to remove all body heat. In the eviscerating process, the body cavity is cut open and the viscera removed, with the liver, heart, and gizzard being cleaned and replaced in the carcass. The eviscerated poultry is then usually wrapped in waterproof paper and packed with ice in crates or barrels. Various methods of dry wrapping are also employed. The freezing of poultry must be accomplished as rapidly as possible and is generally done in a mechanically refrigerated room in which the temperature is maintained at minus 40 degrees Fahrenheit and the air is circulated at speeds up to 70 miles an hour. After the birds have been frozen by this quick-freeze method, they are placed in cold storage until ready for shipment.

The evidence also contains, in exhibit form, numerous booklets, manuals, pamphlets, and statistical studies published in 1929 and later by various Federal agencies, including the Executive Office of the President and U. S. Departments of Commerce and Labor, indicating that, for industrial classification purposes, the slaughter of livestock, meat packing, and the dressing of poultry are regarded as manufacturing activities. As examples, in a 1933 publication of the Bureau of the Census, U. S. Department of Commerce, entitled *Foreign Commerce and Navigation of the United States*, meats are classified as dutiable imports under the listing of "Manufactured Foodstuffs". Four manuals issued by the Bureau of the Budget, Executive Office of the President, in 1940, 1943, 1945, and 1946, variously entitled *Standard Industrial Classification*, *Standard Industrial Classification Manual*, or *Standard Commodity Classification*, all classify meat packing and poultry dressing as manufacturing industries, and the products thereof as manufactured foods. A 1950 publication of the U. S. Department of Commerce entitled *Schedule A Statistical Classification of Imports into the United States* lists fresh and frozen meats and dead, dressed, or undressed

poultry as "Meat Products". "Meat Products" is listed under the broader classification of "Agricultural Manufactured Foodstuffs and Beverages".

In the *Exemption* case, we reported the result of an investigation instituted on our own motion into and concerning the meaning of the term "agricultural commodities (not including manufactured products thereof)" as used in section 203(b)(6). We concluded that the term "agricultural commodities" embraces all products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees, such as milk, wool, eggs, and honey; and [fol. 15] that the parenthetical expression "not including manufactured products thereof" has the effect of limiting agricultural commodities to those in their natural state and those which, as a result of treating or processing, have not acquired new forms, qualities, properties, or combinations. At pages 546 and 547, in discussing the identical questions here in issue, we said:

The words "agricultural commodities (not including manufactured products thereof)" do not include ordinary livestock as the latter are separately mentioned in section 203(b)(6). Section 20(11) of the act provides that "The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses." It necessarily follows that the term as used in section 203(b)(6) has the same meaning. Livestock, such as race horses, show horses, and the like do not come under the classification of "ordinary livestock", and the transportation of animals of this type is subject to the certificate or permit requirements of the act. *Owsley Common Carrier Application*, 31 M.C.C. 778. Poultry, however, are included within the broader description "agricultural commodities." It is clear also that certain products of live animals, such as are embraced in the definition of ordinary livestock, are likewise included; and there is no dispute that wool, at least in the form

sheared from the sheep,¹ is an agricultural commodity. These products are in themselves basic agricultural commodities, separate and distinct from the livestock. But slaughtered animals are not embraced in the definition of ordinary livestock and we are impelled to conclude that the products thereof, such as fresh meats and meat products, do not fall within the description "agricultural commodities" as used in section 203(b)(6). It logically follows that neither killed poultry nor any products thereof come within the term under consideration. We conclude that poultry other than that alive is not an agricultural commodity within the meaning of section 203(b)(6). Further, we are of the opinion that birds of the air such as doves and pigeons are not agricultural commodities.

[fol. 16] The facts before us in this proceeding are more complete as they relate to this particular issue than were those before us in the *Exemption case*, but they contain nothing to warrant any different conclusions. On the contrary, they confirm the conclusions there reached.

On all the evidence now before us, we conclude (1) that the exemption of vehicles used in carrying "ordinary livestock" does not extend to fresh or frozen meats, the products of the slaughter of such livestock; (2) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including the manufactured products thereof)" does not embrace vehicles used in carrying ordinary livestock in view of the specific exemption in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including manufactured products thereof)" does not in any event extend to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry.

Although on somewhat similar facts, at least with respect

¹ In a report on reconsideration in the *Exemption case*, 62 N.C.C. 87, 89, we found that cleaned or scoured raw wool and mohair and redried tobacco leaf are within the agricultural exemption.

to dressing and packing poultry, it was held in the *Kroblin case* that so-called New York-dressed poultry or eviscerated poultry were not "manufactured products" of agricultural [fol. 17] commodities within the intent and meaning of section 203(b)(6), we have not acquiesced in the Court's decision, and a review thereof has been sought. Until a final decision contrary to the findings in the *Exemption case* is reached by the Courts, we adhere to the conclusion that the transportation of fresh and frozen meats and fresh and frozen dressed poultry are subject to the certificate and permit requirements of the Act. In any event, and regardless of the final outcome of the *Kroblin case*, it seems clear that slaughtered livestock or the products of the slaughter of livestock are neither ordinary livestock nor agricultural commodities as those terms are commonly used and understood. It follows that vehicles used in the transportation of slaughtered livestock or the products of slaughtered livestock do not come within the purview of the exemption in section 203(b)(6).

The conclusion that fresh and frozen meats, the products of the slaughter of ordinary livestock are not "agricultural commodities" within the meaning of the statute finds definite support in *Southwestern Trading Co. v. United States*, 208 F. 2d 708, wherein the Court of Appeals for the Fifth Circuit affirmed on appeal in a criminal proceeding a finding that vehicles engaged in carrying "agricultural commodities". In so doing, the Court said:

In a proceeding before the Interstate Commerce Commission, reported in 52 Motor Carrier Cases 511, the history of the legislation was reviewed, and it was found that the primary purpose of the partial exemption provided in said Section 303(b)(6) was to aid the farmer in agricultural pursuits; that the words agricultural commodities should be construed in their plain, usual, and commonly accepted sense. The Commission proceeded to group agricultural commodities under three general headings: Those which are produced by [fol. 18] plants; those which are produced continually by living animals kept on the farm, such as milk, eggs, and wool; and live poultry. The only group into which cow hides could possibly come would be the products

of animals, but it is apparent that cow hides would not be included within this group, as said classification refers only to the commodities which living animals produce continually and with regularity. The hide is a part of the animal, separable only upon its death; it is a product of slaughter only. The Commission specifically found that slaughtered animals were not embraced in the definition of ordinary livestock, and that the products, did not fall within the description "agricultural commodities" as used in Section 303(b)(6). It stated that pelts, skins, or green and salted hides, are not agricultural commodities within the meaning of said section. The conclusion reached by the Commission is directly in point here.

Considering all of the evidence of record, we find that defendant's operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry, in interstate or foreign commerce, are not within the exemption provided in section 203(b)(6) of the act, and that to the extent to which such transportation is not authorized in its certificates, it is unlawful and should be discontinued.

An order will be entered requiring defendant to cease and desist from the performance of the transportation found unlawful herein.

[fol. 19]

ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 13th day of July, A. D. 1954

No. MC-C-1605

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL

v.

FROZEN FOOD EXPRESS

This proceeding being at issue upon complaint and answer on file, and full investigation of the matters and things involved having been made, and the Commission, on the date hereof, having made and filed a report herein containing its

findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That defendant, Frozen Food Express, be and it is hereby, notified and required within 45 days from the date of this order, to cease and desist from all motor carrier operations in interstate or foreign commerce of the character found in the said report to be unlawful and thereafter to abstain from a resumption of such operations unless and until appropriate authority is obtained.

By the Commission. George W. Laird, Secretary.
(Seal).

[fol. 20] EXHIBIT "B" TO BILL OF COMPLAINT

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 108207 Sub 1 *

Frozen Food Express, a Corporation,
Dallas, Texas

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 18th day of June, A. D. 1952

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

* This certificate embraces the operations authorized in No. MC 108207 Sub 1, as modified by order dated April 21, 1952.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Irregular Routes:

Frozen foods, and meats, meat products, and meat byproducts as defined by the Commission (except canned or packaged meats and canned or packaged meat products, other than canned hams, packaged hams, and packaged bacon), *dairy products* as defined by the Commission, *salad dressing, yeast, and uncooked bakery goods*,

Between points in Texas, Louisiana, Illinois, Michigan, Oklahoma, Missouri, and Arkansas.

Between Memphis, Tenn., on the one hand, and, on the other, points in Texas, Louisiana, Michigan, Oklahoma, Missouri and Arkansas.

Between points in Mississippi, on the one hand, and, on the other, points in Arkansas on U. S. Highway 61, and Little Rock, Ark.

Frozen foods, and meats, meat products, and meat byproducts as defined by the Commission (except canned or packaged meats and canned or packaged meat products, other than canned hams, packaged hams, and packaged bacon);

Between points in Mississippi, on the one hand, and, on the other, points in Texas, Louisiana, Illinois, Michigan, Oklahoma, and Arkansas (except points in Arkansas on U. S. Highway 61 and Little Rock, Ark.).

Between Memphis, Tenn., on the one hand, and, on the other, points in Illinois and Mississippi.

Restriction: The service authorized herein is restricted against the following described transportation:

Commodities specified in first paragraph above except frozen foods and fresh meats,

Between New Orleans, La., on the one hand, and, on the other, points in Illinois, points in Arkansas on U. S. Highway 61, Little Rock, Ark., and Memphis, Tenn.

Between Chicago, Ill., on the one hand, and, on the

other, points in Arkansas on U. S. Highway 61, and Little Rock, Ark.

Between Memphis, Tenn., on the one hand, and, on the other, points in Arkansas on U. S. Highway 61, and Little Rock, Ark.

[fol. 21] *Commodities* specified in first paragraph above except fresh meats,

Between St. Louis, Mo., on the one hand, and, on the other, New Orleans, La., Memphis, Tenn., Little Rock, Ark., and points in Arkansas on U. S. Highway 61.

Fresh meats,

From Memphis, Tenn., to points in Illinois.

Fresh meats and frozen meat carcasses,

Between Dallas and Fort Worth, Tex., on the one hand, and, on the other, points in Texas, Louisiana, Oklahoma, Arkansas, and Mississippi.

Commodities, specified in first paragraph above, except frozen food and carcass meat,

Between points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone as defined by the Commission, on the one hand, and, on the other, points in Oklahoma, Texas, and the Chicago, Ill., Commercial Zone as defined by the Commission.

Fresh or frozen meats, in packages, boxes, or barrels,

From points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone as defined by the Commission, to points in Louisiana.

Oleomargarine, butter, shortening, yeast, salad dressing and cheese,

Between points in Texas, on the one hand, and, on the other, points in Oklahoma, and Shreveport, La., Little Rock, Ark., and Memphis, Tenn.

Commodities, specified in first paragraph above, except frozen foods,

From points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone as defined by the Commission, to points in the Chicago, Ill., Commercial Zone as defined by the Commission.

Unfrozen fresh poultry,

From Springdale and Benton, Ark., to points in the Chicago, Ill., Commercial Zone as defined by the Commission.

It is further ordered; and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is further ordered, That this certificate shall supersede the certificate issued in this proceeding on July 28, 1950, which is hereby canceled.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal).

[fol. 22] CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 108207 Sub 3

Frozen Food Express,
a Corporation,
Dallas, Texas

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 28th day of January, A. D., 1949

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder; and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding:

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now; or may here-

after be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Frozen foods, fresh meats, and fruits and vegetables in mechanically refrigerated equipment, over irregular routes,

Between points and places in California, on the one hand, and, on the other, points and places in Louisiana and that part of Texas on and east of a line beginning at the Oklahoma-Texas State Line, and extending along U. S. Highway 83 to junction U. S. Highway 290, thence along U. S. Highway 290 to Sonora, Tex., thence along U. S. Highway 277 to the United States-Mexico boundary line, traversing New Mexico and Arizona for operating convenience only.

And it is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal).

[fol. 23] CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 108207 Sub 8

Frozen Food Express,
a Corporation,
Dallas, Texas.

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 13th day of January, A. D., 1950

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements,

rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Irregular routes:

Condensed milk and cream in vehicles equipped for protection against heat and cold,

From Ladysmith, Wis., to points and places in Texas.

Cheese in vehicles equipped for protection against heat and cold,

From points and places in Wisconsin to points and places in Texas.

From Nashville, Shelbyville, and Carthage, Tenn., to points and places in Oklahoma, Louisiana, and Texas.

From Plymouth, Monroe, Milwaukee, and Green Bay, Wis., to points and places in Oklahoma, Arkansas, Mississippi, and Louisiana.

Frozen foods, in vehicles equipped for protection against heat and cold,

From Memphis, Tenn., to Dallas, Tex., and points and places in Oklahoma.

From Nashville, Tenn., to points and places in Oklahoma.

Frozen eggs, in vehicles equipped for protection against heat and cold,

From Enid, Okla., and Dallas and Houston, Tex., to Nashville, Tenn.

Return with no transportation for compensation except as otherwise authorized.

Authority is granted to traverse Iowa, Illinois, Missouri, and Kansas, for operating convenience only.

And it is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal).

[fol. 24] CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 108207 Sub 12 *

Frozen Food Express, a Corporation,
Dallas, Texas

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 7th day of June, A. D. 1954

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may here-

* This certificate embraces the operating rights in the certificates superseded and canceled in the last ordering paragraph above and is issued solely for the purpose of eliminating duplications.

after be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Irregular routes:

Frozen foods and fresh meats,

Between Memphis, Tenn., and points in Arkansas, Louisiana, and Texas on the one hand, and, on the other, points in Iowa, Kansas, and Nebraska.

Restriction: The service authorized herein is restricted to the transportation of frozen foods and fresh carcass meat between points in that part of the Kansas City Commercial Zone, as defined by the Commission, situated in Kansas, on the one hand, and, on the other, points in Louisiana and in that part of Texas on, east, and south of a line beginning at the Oklahoma-Texas State line and extending over U. S. Highway 281 to San Antonio, Tex., thence west along U. S. Highway 90 to Del Rio, Tex., and thence south over U. S. Highway 277 to the International Boundary line between the United States and Mexico, and further restricted to the transportation of frozen foods, (a) from Coffeyville, Topeka, and Wichita, Kans., to points in Texas, and (b) from Topeka and Wichita, Kans., to Memphis, Tenn., and points in Arkansas.

Meats, meat products, and meat by-products,

From Wichita, Kans., to points in Texas, with no transportation for compensation on return except as otherwise authorized.

Meats, meat products, and meat by-products, except fresh meats,

Between points in Louisiana and Texas, on the one hand, and, on the other, points in Iowa, except Ottumwa, and points in Nebraska and Kansas, except those situated in the Kansas City, Mo.,-Kansas City, Kans., Commercial Zone, as defined by the Commission.

It is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

And it is further ordered, That this certificate shall supersede Certificate Nos. MC 108207 Sub 12 and MC 108207 Sub 24, issued December 5, 1950, and April 21, 1954, respectively, and that said certificates be, and they are hereby, canceled.

By the Commission, division 5.

George W. Laird, Secretary. (Seal).

[fols. 25-26] CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

No. MC 108207 Sub 17

Frozen Food Express, a Corporation,
Dallas, Texas

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D.C., on the 28th day of November, A.D: 1952

After due investigation, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

It is ordered, That the said carrier be, and it is hereby, granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

It is further ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Irregular Routes,

Boneless beef, in brine,

- o From Laredo, Tex., to points in California, with no transportation for compensation on return except as otherwise authorized.

Uncooked biscuits,

From Los Angeles, Calif., to Shreveport, La., and to points in Texas on and east of a line beginning at the Oklahoma-Texas State line and extending along U. S. Highway 83 through Guthrie, Aspermont, Abilene, and Eden to junction U. S. Highway 290, thence along U. S. Highway 290 to Sonora, Tex., thence along U. S. Highway 277 through Del Rio to the United States-Mexico boundary line, with no transportation for compensation on return except as otherwise authorized.

Dressed poultry,

From Brownwood, Paris, Taylor, Waco, and Yoakum, Tex., to Fontana, Fresno, San Francisco, and Los Angeles, Calif., with no transportation for compensation on return except as otherwise authorized.

And it is further ordered, and is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

By the Commission, division 5.

George W. Laird, Acting Secretary. (Seal.)

[fol. 27] IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed
August 16, 1954

The allegations in the unnumbered first paragraph of the complaint states that the complaint was filed against the United States of America and the Interstate Commerce Commission. It is therefore assumed that said Commission is a party defendant to this action without further intervention as authorized in 28 U.S.C. 2323.

The Interstate Commerce Commission, hereinafter called the Commission, reserving all advantage and benefit of exception to errors of the complaint, for answer thereunto, in so much as deemed material, answers and says:

I

Answering allegations of preliminary paragraphs (1) and (2), and paragraphs I and II of the complaint, the Commission admits that plaintiff is a Texas corporation with a place of business in Houston in the Southern District of Texas, and is authorized to operate, in interstate commerce, as a common carrier by motor vehicle within the limits of authority granted by the Commission under certificates of public convenience and necessity issued to it, and that this Court has jurisdiction of the action herein and venue of the parties thereto.

II

The Commission denies the allegations of paragraph III of the complaint, that plaintiff has not sought any authority from the Commission to transport commodities such as therein specified and claimed to be exempt from regulations of motor carriers under Part II of the Interstate Commerce Act, Section 203 (b)(6), (49 U.S.C. 303 (b)(6)), and it is alleged that plaintiff has applied for, been granted and issued, certificates of such authority, as disclosed in part by the six copies of certificates attached to the complaint, which are here admitted to be correct

copies thereof. It is further denied that plaintiff is authorized to transport for hire the specific commodities named in said paragraph, between all points and places in the forty-eight States and the District of Columbia, except as authorized by certificates of public convenience and necessity granted and issued by the Commission, or of "agricultural commodities (not including manufactured products thereof)" under 49 U.S.C: 303(b)(6), except as have been determined by the Commission to come within that exemption, as fully set forth in its report of July 13, 1954, Docket No. MC-C-1605, *East Texas Motor Freight Lines., et al. v. Frozen Food Express.*

Further answering the allegations of said paragraph III, that plaintiff, since enactment of Part II of said Act, has been transporting agricultural commodities (not including manufactured products thereof), under 49 U.S.C. [fol. 29] 303(b)(6), beyond the limits of certificates issued to it, or beyond the limits of exemption of such agricultural commodities as interpreted and defined in 52 M.C.C. 511, is neither admitted nor denied because of lack of information and knowledge thereof.

III.

The Commission denies the allegations of paragraph IV, 1, 2, 3, 4 and 5 of the complaint.

IV.

The Commission admits the allegations of paragraph V of the complaint, that an order has been entered, directed to plaintiff corporation, requiring it to cease and desist its operations in interstate commerce, in the transportation of fresh or frozen meats and fresh or frozen dressed poultry, except as authorized by and under certificates granted and issued to it by the Commission, and alleges that no threats of enjoining plaintiff or of filing complaints against it, except the provisions of said cease and desist order, have been made. It is further alleged that the Commission has no authority to issue injunctions against plaintiff corporation, or against anyone, and has no authority to enforce its said cease and desist order except by filing of court action, either petition for injunction or prosecution,

under Section 222(a) and (b) of the Interstate Commerce Act (49 U.S.C. 322(a) and (b)).

V.

The Commission further alleges that proceedings here involved were instituted December 23, 1953, upon the filing of complaint by three certificated common carriers by motor vehicles, alleging that plaintiff had been transporting fresh [fol. 30] and frozen meats, meat products, and dressed poultry between points not authorized by any certificate held by it; and seeking an order requiring said defendant, plaintiff herein, to cease and desist from the alleged unauthorized and unlawful operations, and the Irregular Motor Common Carrier Conference of American Trucking Associations, Inc., were permitted to intervene in the proceeding in support of complainants. Parties to the proceeding submitted it for Commission consideration upon a stipulated statement of facts, including admissions of defendant, plaintiff herein, that it had engaged, and is presently engaged in transportation of fresh and frozen meats and fresh and frozen dressed poultry from and to points not authorized by its certificates. Thereafter the order in Docket No. MC-G-1605 *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, was entered on July 13, 1954, the order here involved.

VI.

The Commission further alleges that all the parties to said proceedings were given a full and complete hearing; that the said report and order entered July 13, 1954, were and are fully supported and justified by the submissions made in said proceedings as aforesaid, and that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceeding by their respective counsel.

The Commission further alleges that said report was not made or entered either arbitrarily or unjustly, or contrary to law; that in making said report the Commission did not exceed the authority conferred upon it by law, and the

Commission denies each of and all the allegations to the contrary contained in the complaint

[fol. 31]

VII.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission. By /s/ Allen Crenshaw, Associate General Counsel. /s/ Edward M. Reidy, General Counsel. Of Counsel.

[fols. 32-37] CERTIFICATE OF SERVICE (OMITTED IN PRINTING)

[fol. 38]

[File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF TEXAS, HOUSTON DIVISION

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed September 13, 1954

I.

Answering paragraphs I and II of the plaintiff's complaint the defendant admits the same.

II.

Answering paragraph III of the plaintiff's complaint the defendant neither admits nor denies the allegations since it has no knowledge of the same.

III.

Answering paragraph IV the defendant admits that the Interstate Commerce Commission has issued the order com-

plained of (Exhibit A) attached to the plaintiff's complaint but denies that the complainant is deprived of its statutory right granted under the exemption of Interstate Commerce Act, part 2, to transport agricultural commodities (not including manufactured products thereof). The United States further avers that meat products do not come within such exemption.

Further answering paragraph IV the defendant denies that the finding and order of the Commission is arbitrary, unreasonable, capricious and unjust to the complainant concerning the transportation of meat products. Such order as it relates to meat products does not constitute an abuse of the Interstate Commerce Commission's discretion. Neither does it transcend the Commission's statutory power [fol. 39] and authority concerning the transportation of meat products.

IV.

Answering paragraph V the defendant denies the complainant will be deprived of the right granted to it under the laws of the United States so far as the transportation of meat products is concerned. Further answering paragraph V, the defendant alleges that the transportation of fresh and frozen meats and fresh and frozen dressed poultry come within the exemption of the Interstate Commerce Act, part 2, 49 USCA, section 303(b)(6) and that said order issued by the Interstate Commerce Commission relative to the transportation of these two commodities is unjust, unreasonable and unlawful.

And the United States of America further alleges that the Interstates Commerce Commission is required by Title 7 USCA, section 1291(a) to notify previous to hearing or disposition of the complaint relating to rates, changes, tariffs and practices concerning the transportation of farm products, the Secretary of Agriculture. That this issue which has been determined by the Interstate Commerce Commission was so made without notice to the Secretary of Agriculture.

That the foregoing requirement is mandatory in accordance with section 1291 *supra* and the Interstate Commerce Commission having failed to comply with the provisions

of the statute should be ordered to reopen such hearing in compliance with this requirement of law.

Wherefore the United States of America prays that this honorable court remand this issue to the Interstate Commerce Commission with an order to comply with Title 7, USCA, section 1291(a) and to grant such other relief as is proper and equitable.

By the United States of America,

James E. Kilday, Charles S. Sullivan, Jr., Special Assistants to the Attorney General; Stanley N. Barnes, Assistant Attorney General; Malcolm R. Wilkey, United States Attorney.

[fols. 41-51] CERTIFICATE OF SERVICE (Omitted in printing)

[fol. 52] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 8396

FROZEN FOOD EXPRESS, PLAINTIFF

EZRA TAFT BENSON, Secretary of Agriculture of the United States, Intervening Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

MOTION FOR LEAVE TO INTERVENE BY EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES—Filed October 13, 1954.

To the Honorable Judges of the United States District Court for The Southern District of Texas, Houston Division:

I

Ezra Taft Benson, Secretary of Agriculture of the United States, hereby moves the Court under Rule 24 of the Rules

of Civil Procedure, for an order permitting him to intervene as a plaintiff in this action so that he may make and establish the claims set forth in the proposed complaint attached hereto.

II

The decision of the Interstate Commerce Commission entered in No. MC-C-1605, *East Texas Motor Freight Lines, et al. v. Frozen Food Express, Inc.* (decided July 13, 1954), [fol. 53] which decision the complaint of Frozen Food Express seeks to have set aside, while purporting to affect only the defendant in the administrative proceeding, actually adversely affects a very large class of persons who transport fresh and frozen meat and fresh and frozen dressed poultry in interstate commerce by motor vehicle.

The Secretary of Agriculture is charged by section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1946 ed. 1622) with the duty of securing for the agricultural community equitable and reasonable transportation facilities for agricultural commodities including fresh and frozen meat and fresh and frozen dressed poultry; and the intervention of the Secretary of Agriculture is necessary in order that such interest be adequately represented.

The intervention of the Secretary of Agriculture in this proceeding is also contemplated by section 10 of the Administrative Procedure Act (5 U.S.C. 1946 ed. 1009), section 2323 of the Judicial Code (28 U.S.C. 1946 ed. Supp. IV 2323), and section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946 ed. 1291).

Wherefore, your petitioner prays that an order be entered permitting him to intervene in this action and to file the proposed complaint attached hereto.

Respectfully submitted, by direction of Ezra Taft Benson, Secretary of Agriculture of the United States. Charles W. Bucy, Associate Solicitor; Walter D. Matson, Harry Ross, Jr., Attorneys, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

[fol. 54] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING INTERVENTION OF THE SECRETARY OF
AGRICULTURE—October 13, 1954

“10-13-54: The Motion to Intervene on behalf of Ezra Taft Benson, Secretary of Agriculture of the United States, being presented to me in Chambers, accompanied by copy of the Complaint in Intervention, it is ordered that the Clerk will file the Complaint and note the appearance of counsel on the docket sheet. Counsel will be permitted to appear and participate in all proceedings. Final ruling on the Motion to Intervene will await the convening of the statutory Court.

C.”

[fol. 55] IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 8396

FROZEN FOOD EXPRESS, Plaintiff,

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE
UNITED STATES, Intervening Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE
COMMISSION

COMPLAINT OF EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES—Filed, October 13, 1954

I

Intervening plaintiff, Ezra Taft Benson, Secretary of Agriculture of the United States (herein referred to as the Secretary), brings this complaint to suspend, enjoin, annul, and set aside the report and order of the Interstate Commerce Commission (herein referred to as the Commission) entered on July 13, 1954, and the order entered September

17, 1954, in a proceeding before the Commission entitled "MC-C-1605, *East Texas Motor Freight Lines, et al. v. Frozen Food Express*, ——— M.C.C. ———."

[fol. 56]

II

The jurisdiction of the Court is founded upon section 205(g) of the Interstate Commerce Act (49 U.S.C. 1946 ed. 305(g)), section 10 of the Administrative Procedure Act (5 U.S.C. 1946 ed. 1009), sections 1336, 1398, 2284, and 2321 to 2325, inclusive, of the Judicial Code (28 U.S.C. 1946 ed. Supp. IV 1336, 1398, 2284, and 2321-2325), and section 201 of the Agricultural Adjustment Act of 1938, (7 U.S.C. 1946 ed. 1291).

III

The United States of America is named as a statutory defendant pursuant to section 2322 of the Judicial Code (28 U.S.C. 1946 ed. Supp. IV 2322).

IV

The Commission is an administrative tribunal, created by the Act to Regulate Commerce approved February 4, 1887 (24 Stat. 383), with specifically vested powers and duties respecting interstate commerce under the said Act and the acts amendatory thereof and supplemental thereto, hereinafter referred to as the Interstate Commerce Act.

V

The administrative proceeding entitled MC-C-1605, *East Texas Motor Freight Lines, et al. v. Frozen Food Express*, was instituted by a complaint filed December 23, 1953, by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., in which it was alleged that Frozen Food Express had transported and was continuing to transport fresh and frozen meat and fresh [fol. 57] and frozen dressed poultry in interstate commerce from and to points for which no authorization of the Commission had been secured. Frozen Food Express by answer alleged that the complained of operations embraced only the transportation of agricultural commodities which

transportation, by section 203(b)(6), of the Interstate Commerce Act (49 U.S.C. 1946 ed. 303(b)(6)), is exempted from economic regulation by the Commission. The proceeding was not made the subject of an oral hearing but was submitted upon a stipulation of facts. No recommended report of an examiner was issued and the proceeding was decided in the first instance by the full Commission which found and concluded in its report and order issued July 13, 1954, a copy of which is attached hereto as Appendix A, that fresh and frozen meat and fresh and frozen dressed poultry are not embraced within the terms "ordinary livestock" or "agricultural commodities" as those terms are used in section 203(b)(6) of the Interstate Commerce Act (49 U.S.C. 1946 ed. 303(b)(6)). At no time prior to the disposition of this proceeding was the Secretary of Agriculture notified by the Commission nor did he receive notice of the existence of the proceeding in any other manner prior to the Commission's decision. Subsequent to the issuance of the Commission's report and order of July 13, 1954, the Secretary learned of the proceeding and immediately filed a petition for leave to intervene and for oral hearing, a copy of which petition is attached hereto as Appendix B. That petition was denied by order of the Commission dated September 17, 1954 (actually released September 28, 1954), a copy of which is attached hereto as Appendix C.

[fol. 58]

VI

Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946 ed. 1291) states:

(a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. *Before hearing or disposing of any complaint* (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, *the Commission shall cause the Secretary to be notified, and, upon applica-*

tion by the Secretary, shall permit the Secretary to appear and be heard. (Emphasis supplied.)

(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

(c) For the purposes of this section, the Interstate Commerce Commission is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products.

The Commission, notwithstanding the directive contained in the above-quoted statute, proceeded to dispose of the complaint in the administrative proceeding without notifying the Secretary; and although the Secretary, upon learning of the administrative proceeding, sought leave to present evidence therein on behalf of the agricultural community, he was denied the right to be heard.

The Secretary alleges that the report and order of the Commission is null and void and should be set aside because [fol. 59] the failure of the Commission to notify him "before hearing or disposing" of the complaint which initiated the administrative proceeding and the denial of his petition for leave to intervene and for oral hearing unjustly deprived him of the right to become a party and to be heard on behalf of the agricultural community which he represents, with the result that he was denied a fair hearing.

VII

The Secretary further alleges that the report and orders of the Commission in MC-C-1605, *East Texas Motor Freight Lines, et al. v. Frozen Food Express*, dated July 13, 1954, and September 17, 1954, are unsupported by substantial evidence, are based upon errors of law, fail to give effect to the legislative purpose of section 203(b)(6) of the Interstate Commerce Act, exceed the statutory authority of the Commission, and are unlawful, arbitrary, capricious, and null and void.

Wherefore, the Secretary prays that the Court suspend, enjoin, annul, and set aside the report and order of the Commission in MC-C-1605, *East Texas Motor Freight Lines, et al. v. Frozen Food Express*, dated July 13, 1954, and the order dated September 17, 1954, and that the Secretary have such other and further relief in the premises as in equity may appertain and as may be deemed by the Court fit and proper.

Respectfully submitted, by the direction of Ezra Taft Benson, Secretary of Agriculture of the United States. (S.) Charles W. Bucy, Associate Solicitor; (S.) Walter D. Matson, Harry Ross, Jr., Attorneys, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

[fols. 60-61] CERTIFICATE OF SERVICE (omitted in printing)

[fol. 62]

APPENDIX A TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. MC-C-1605

EAST TEXAS MOTOR FREIGHT LINES, INC., et al

v

FROZEN FOOD EXPRESS

Submitted April 2, 1954. Decided July 13, 1954

Defendant's unauthorized operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry found not to be within the exemption provided in section 203(b)(6) of the Interstate Commerce Act and to be unlawful. Defendant ordered to cease and desist from performing the service found to be unlawful. *Rollo E. Kidwell, David G. Macdonald, Francis W. McInerney, and Lee Reeder* for complainants. *Clarence D. Todd, Dale C. Dillon, and Charles F. Riddle* for intervener in support of complainants. *Carl L. Phinney and Leroy Hallman* for defendant.

REPORT OF THE COMMISSION

By the Commission:

No oral hearing has been held in this proceeding, and it has been submitted on a stipulated statement of facts. In view of the lack of any dispute as to the facts, the clarity of the issues, and the desirability of an early decision, no report of an examiner is deemed necessary.

By complaint filed December 23, 1953, East Texas Motor Freight Lines, a corporation, of Dallas, Tex., Gillette Motor Transport, Inc., of Dallas, and Jones Truck Lines, Inc., of Springdale, Ark.; hereinafter called East Texas, Gillette, and Jones, respectively, all motor common carriers, allege that the defendant, Frozen Foods Express, of Dallas, a corporation, is, and has been, engaged in the transportation of fresh and frozen meats, meat products, and dressed poul-
[fol. 63] try from, to, and between points not authorized in

any certificate held by it. Complainants seek an order requiring defendant to cease and desist from the alleged unauthorized and unlawful operations and such other and further relief as may be considered proper in the premises. By order entered March 4, 1954, the Irregular Route Motor Common Carrier Conference of American Trucking Associations, Inc., hereinafter referred to as the Conference, was permitted to intervene in support of complainants.

Complainants transport general commodities over regular routes in an area which includes Illinois, Missouri, Oklahoma, Tennessee, and Texas. Defendant is authorized to transport frozen foods, fresh foods, including fruits and vegetables, packing-house products, and dairy products, from, to or between specified points in Arkansas, California, Illinois, Louisiana, Kansas, Michigan, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin. It admits that it has, and now is engaged in the transportation of fresh and frozen meats and fresh and frozen dressed poultry from and to points not authorized by its certificates. Following is a list of typical shipments transported by defendant beyond the scope of its certificates during September, October, and November, 1953:

[fol. 164]

Commodity:	Weight Pounds	Origin	Destination
Beef and mutton	26,325	San Antonio, Tex.	Cincinnati, Ohio
Cut-up poultry	25,674	Fayetteville, Ark.	Norwood, Ohio
Dressed poultry	25,276	Bentonville, Ark.	Dayton, Ohio
	23,890	" "	Columbus, Ohio
Fresh beef	23,061	Fort Worth, Tex.	Turlock, Calif.
Frozen turkeys	23,900	Bentonville, Ark.	Toledo, Ohio
Veal trimmings	29,967	Fort Worth, Tex.	Louisville, Ky.
			Cincinnati, Ohio

In each such instance no commodity other than that indicated was transported at the same time in the same vehicle.

Defendant, relying upon *Interstate Commerce Commission v. Kroblin*, 113 F. Supp. 599, which was affirmed on appeal, — F. 2d —, contends that the operations complained of come within the exemption provided by section 203(b)(6) of the Act, and may be performed without specific

authority from this Commission. Section 203(b)(6), so far as here material, provides as follows:

Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . .

(6) motor vehicles used in carrying property consisting of *ordinary livestock*, fish (including shell fish), or *agricultural (including horticultural) commodities (not including manufactured products thereof)*, if such motor vehicles are not used in carrying any other property, or passengers, for compensation . . .
(Italics supplied)

We have involved here the transportation of two types of commodities, namely, (1) fresh or frozen dressed poultry and (2) fresh or frozen dressed meat or, more precisely, those packing-house products derived from the slaughter [fol. 65] of ordinary livestock. Although, as will be seen, we conclude that neither type of commodity is within the exemption provided by the statute, the reasoning in support of such conclusion differs as to the two classes of commodities. Obviously the exemption, if any, of vehicles used in the transportation of dressed poultry depends upon whether that commodity is an "agricultural commodity" or a "manufactured product thereof". In the case, however, of dressed livestock or those packing-house products derived from the slaughter of livestock, that issue is not in our opinion controlling.

As originally enacted in 1935, section 203(b)(6) exempted transportation performed in "motor vehicles used exclusively in carrying livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof)." In 1938 the section was amended to read "motor vehicles used in carrying property consisting of livestock, fish (including shellfish), or agricultural commodities (not including the manufactured products thereof) if such motor vehicles are not used in carrying any other property or passengers for compensation". In 1940 the word "livestock" in the exemption was modified to read "ordinary livestock", a term previously defined in section

20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Thus, from the begining of motor carrier regulation by us an exemption has been provided in section 203(b)(6) of vehicles used in the carrying of "livestock" or "ordinary [fol. 66] livestock", and also in the same section an exemption of vehicles used in the carrying of "agricultural commodities". The latter exemption does not duplicate the former nor did it establish a second exemption of vehicles used in carrying ordinary livestock. On the other hand, it must be concluded that the exemption of vehicles used in carrying ordinary livestock ends upon the slaughter of the livestock when it loses its identity as livestock, and that there was no intent in the same section to provide a further or second exemption of vehicles carrying the packing-house products which result from the slaughter, on the theory that such commodities are "agricultural commodities". A Congressional intent, had there been one to exempt the transportation not only of ordinary livestock but also of the products of the slaughter thereof, would unquestionably have been so simple to state that the failure to do so negatives any such strained construction of the language actually used to accomplish that end. This conclusion conforms to that made by us in *Determination of Exempted Agricultural Commodities*, 52 M.C.C. 511, hereinafter referred to as the *Exemption case*.

The record herein, apparently for the purpose of demonstrating that fresh meat is in any event a "manufactured product" of an agricultural commodity, describes the slaughtering processes at some length. This evidence as it relates to the processing of livestock is beside the point if our conclusion is correct that the exemption of vehicles used in carrying "agricultural commodities" does not duplicate the exemption of vehicles used in carrying "ordinary live-[fol. 67] stock." Nevertheless, we shall review it briefly and later we shall refer to other evidence designed to show that fresh and frozen meats which are the products of the slaughter of ordinary livestock are, in any event, manufactured products.

Cattle are raised on farms and ranches and generally

are shipped alive by the growers to stockyards operated by, or in conjunction with, meat packing companies. The slaughtering process begins only after the animals reach the stockyards and consists of (1) holding the cattle in pens, including resting, watering, and feeding, (2) killing, including knocking, shackling, hoisting, and bleeding, (3) skinning and cutting, (4) washing, (5) stamping, scaling, and grading, (6) hot clothing, and (7) chilling. In processing the animals for slaughter, various mechanical and other aids are employed, such as pens, runways, pulleys and chains, overhead conveyors, electric saws, mechanical slides, water heaters, ribbon branders, and chilling systems entailing the use of brine tanks, pumps, and related gear.

Chickens and other poultry intended to be used for food are raised on farms or by so-called "commercial broiler houses". Poultry is raised on farms principally for the production of eggs. Their sale for killing is largely incidental to that production. The commercial broiler houses, on the other hand, are primarily engaged in producing poultry for food purposes. From three to four lots are usually raised and marketed during the course of a year. In most instances, chickens, turkeys, and other poultry are shipped alive from the farm or commercial broiler house to the [fol. 68] processing plant. Only a small percentage of the total number raised are killed and processed by the grower. The principal exceptions are the Long Island, N.Y., duck industry and certain growers' cooperatives, which carry on all operations incidental to the marketing of dressed poultry including the growing, killing, and processing.

In the packing plants, the birds are first placed on an endless chain and then carried by the chain through the various stages of processing, which includes killing, picking, pinning, singeing, cropping and venting, washing, chilling, eviscerating, packaging, and freezing. Picking is done both by machinery and by hand, the mechanical picker consisting of revolving drums equipped with rubber fingers. In some plants the removal of feathers is accomplished by the use of hot wax. The usual method of chilling is to place the carcasses in metal baskets which are then submerged in tanks of ice water long enough to remove all body heat. In the eviscerating process, the body cavity is cut open

and the viscera removed, with the liver, heart, and gizzard being cleaned and replaced in the carcass. The eviscerated poultry is then usually wrapped in waterproof paper and packed with ice in crates or barrels. Various methods of dry wrapping are also employed. The freezing of poultry must be accomplished as rapidly as possible and is generally done in a mechanically refrigerated room in which the temperature is maintained at minus 40 degrees Fahrenheit and the air is circulated at speeds up to 70 miles an hour. After the birds have been frozen by this quick-freeze method, they are placed in cold storage until ready for shipment.

The evidence also contains, in exhibit form, numerous booklets, manuals, pamphlets, and statistical studies published in 1929 and later by various Federal agencies, including the Executive Office of the President and U.S. Departments of Commerce and Labor, indicating that, for industrial classification purposes, the slaughter of livestock, meat packing, and the dressing of poultry are regarded as manufacturing activities. As examples, in a 1933 publication of the Bureau of the Census, U.S. Department of Commerce, entitled *Foreign Commerce and Navigation of the United States*, meats are classified as dutiable imports under the listing of "Manufactured Foodstuffs". Four manuals issued by the Bureau of the Budget, Executive Office of the President, in 1940, 1943, 1945, and 1946, variously entitled *Standard Industrial Classification*, *Standard Industrial Classification Manual*, or *Standard Commodity Classification*, all classify meat packing and poultry dressing as manufacturing industries, and the products thereof as manufactured foods. A 1950 publication of the U.S. Department of Commerce entitled *Schedule A Statistical Classification of Imports into the United States* lists fresh and frozen meats and dead, dressed, or undressed poultry as "Meat Products". "Meat Products" is listed under the broader classification of "Agricultural Manufactured Foodstuffs and Beverages".

In the *Exemption case*, we reported the result of an investigation instituted on our own motion into and concerning the meaning of the term "agricultural commodities (not including manufactured products thereof)" as used in section 203(b)(6). We concluded that the term "agricul-

tural commodities" embraces all products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees, such as milk, wool, eggs, and honey; and that the parenthetical expression "not [fol. 70] including manufactured products thereof" has the effect of limiting agricultural commodities to those in their natural state and those which, as a result of treating or processing, have not acquired new forms, qualities, properties, or combinations. At pages 546 and 547, in discussing the identical questions here in issue, we said:

The words "agricultural commodities (not including manufactured products thereof)" do not include ordinary livestock as the latter are separately mentioned in section 203(b)(6). Section 20(11) of the act provides that "The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses." It necessarily follows that the term as used in section 203(b)(6) has the same meaning. Livestock, such as race horses, show horses, and the like do not come under the classification of "ordinary livestock", and the transportation of animals of this type is subject to the certificate or permit requirements of the act. *Owsley Common Carrier Application*, 31 M.C.C. 778. Poultry, however, are included within the broader description "agricultural commodities." It is clear also that certain products of live animals, such as are embraced in the definition of ordinary livestock, are likewise included; and there is no dispute that wool, at least in the form sheared from the sheep,¹ is an agricultural commodity. These products are in themselves basic agricultural commodities, separate and distinct from the livestock. But slaughtered animals are not embraced in the definition

¹ In a report on reconsideration in the *Exemption case*, 62 M.C.C. 87, 89, we found that cleaned or scoured raw wool and mohair and redried tobacco leaf are within the agricultural exemption.

of ordinary livestock and we are impelled to conclude that the ~~products~~ thereof, such as fresh meats and meat products, do not fall within the description "agricultural commodities" as used in section 203(b)(6). It logically follows that neither killed poultry nor any products thereof come within the term under consideration. We conclude that poultry other than that alive is not an agricultural commodity within the meaning of section 203(b)(6). Further, we are of the opinion that birds of the air such as doves and pigeons are not agricultural commodities.

[fol. 71] The facts before us in this proceeding are more complete as they relate to this particular issue than were those before us in the *Exemption case*, but they contain nothing to warrant any different conclusions. On the contrary, they confirm the conclusions there reached.

On all the evidence now before us, we conclude (1) that the exemption of vehicles used in carrying "ordinary livestock" does not extend to fresh or frozen meats, the products of the slaughter of such livestock; (2) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including the manufactured products thereof)" does not embrace vehicles used in carrying ordinary livestock in view of the specific exemption in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including manufactured products thereof)" does not in any event extend to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry.

Although on somewhat similar facts, at least with respect to dressing and packing poultry, it was held in the *Kroblin case* that so-called New York-dressed poultry or eviscerated poultry were not "manufactured products" of [fol. 72] agricultural commodities within the intent and meaning of section 203(b)(6), we have not acquiesced in the Court's decision, and a review thereof has been sought. Until a final decision contrary to the findings in the *Exemption case* is reached by the Courts, we adhere to the conclusion that the transportation of fresh and frozen

meats and fresh and frozen dressed poultry are subject to the certificate and permit requirements of the act. In any event, and regardless of the final outcome of the *Krablin case*, it seems clear that slaughtered livestock or the products of the slaughter of livestock are neither ordinary livestock nor agricultural commodities as those terms are commonly used and understood. It follows that vehicles used in the transportation of slaughtered livestock or the products of slaughtered livestock do not come within the purview of the exemption in section 203(b)(6).

The conclusion that fresh and frozen meats, the products of the slaughter of ordinary livestock are not "agricultural commodities" within the meaning of the statute finds definite support in *Southwestern Trading Co. v. United States*, 208 F. 2d 708, wherein the Court of Appeals for the Fifth Circuit affirmed on appeal in a criminal proceeding a finding that vehicles used in carrying cow hides were not within the exemption of vehicles engaged in carrying "agricultural commodities". In so doing, the Court said:

In a proceeding before the Interstate Commerce Commission, reported in 52 Motor Carrier Cases 511, the history of the legislation was reviewed, and it was found that the primary purpose of the partial exemption provided in said Section 303(b)(6) was to aid the farmer in agricultural pursuits; that the words agricultural commodities should be construed in their plain, usual, and commonly accepted sense. The Commission proceeded to group agricultural commodities under three general headings: Those which are produced by plants; those which are produced continually by living animals kept on the farm, such as milk, eggs, and wool; and live poultry. The only group into which cow hides could possibly come would be the products of animals, but it is apparent that cow hides would not be included within this group, as said classification refers only to the commodities which living animals produce continually and with regularity. The hide is a part of the animal, separable only upon its death; it is a product of slaughter only. The Commission specifically found that slaughtered animals

were not embraced in the definition of ordinary livestock, and that the products thereof, such as fresh meat and meat products, did not fall within the description "agricultural commodities" as used in Section 303(b)(6). It stated that pelts, skins, or green and salted hides, are not agricultural commodities within the meaning of said section. The conclusion reached by the Commission is directly in point here.

Considering all of the evidence of record, we find that defendant's operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry, in interstate or foreign commerce, are not within the exemption provided in section 203(b)(6) of the act, and that to the extent to which such transportation is not authorized in its certificate, it is unlawful and should be discontinued.

An order will be entered requiring defendant to cease and desist from the performance of the transportation found unlawful herein.

[fels. 74-86]

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of July, A.D. 1954.

No. MC-C-1605

EAST TEXAS MOTOR FREIGHT LINES, INC., et al.

v.

FROZEN FOOD EXPRESS

This proceeding being at issue upon complaint and answer on file, and full investigation of the matters and things involved having been made, and the Commission, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That defendant, Frozen Food Express, be, and it is hereby, notified and required, within 45 days from the date of this order, to cease and desist from all motor

carrier operations in interstate or foreign commerce of the character found in the said report to be unlawful and thereafter to abstain from a resumption of such operations unless and until appropriate authority is obtained.

By the Commission.

George W. Laird, Secretary.

(Seal)

[fol. 87] IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION TO COMPLAINT
OF EZRA TAFT BENSON, SECRETARY OF AGRICULTURE—Filed
October 14, 1954

Now comes the defendant Interstate Commerce Commission, hereinafter referred to as the Commission, and for answer to the complaint herein filed by Ezra Taft Benson, Secretary of Agriculture of the United States, as an intervening plaintiff, admits, denies and avers as follows:

1

The Commission admits the allegations in paragraphs I, II, III, and IV of the said complaint, except the allegation in paragraph II that the Court's jurisdiction is founded upon section 201 of the Agricultural Adjustment Act of 1938, which the Commission expressly denies.

2

The Commission admits the allegations in paragraph V, except the allegation that the Secretary of Agriculture received no notice of the said proceeding prior to the Commission's decision therein, as to the truth of which [fol. 88] allegation the Commission is without knowledge.

3

Answering paragraph VI, the Commission alleges that it was not required, under the statute therein referred to or

under any other statute, to notify the Secretary of Agriculture before proceeding with the disposition of the said complaint. The Commission admits that after the said complaint was at issue and after all the evidence of the complainants and the respondents had been received and after it (the Commission) had rendered its decision, the Secretary petitioned for leave to intervene in the said proceeding and for an oral hearing, and admits that it denied the said petition, a copy of its denial order being attached to the Secretary's complaint and marked Appendix "C".

The Commission expressly denies the allegation that its report and order in the said proceeding are null and void because of its failure to notify the Secretary before disposing of the said complaint and because of its denial of the Secretary's petition for leave to intervene and for oral hearing.

4

The Commission denies each of and all the allegations in paragraph VII of the said complaint.

5

Further answering the said complaint, the Commission alleges that the findings in its said report and order were and are, and each of them was and is, fully supported by the evidence admitted in the said proceeding; that the said findings afford an adequate basis for the Commission's conclusions therein; and that in making and entering the said report and order the Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition brought to its attention by or on behalf of the parties to the said proceeding.

The Commission further alleges that the said report and order were not made or entered either arbitrarily or unjustly, or without proof, or contrary to the relevant evidence, or without evidence to support them; that in making its said report and order the Commission did not exceed the authority conferred upon it by law; and the Commission denies each of and all the allegations to the contrary contained in the said complaint, and denies that its said report

and order are invalid or illegal for any of the reasons set forth therein, or for any other reason.

Wherefore, having fully answered, the Commission prays that the relief sought by the Secretary of Agriculture, as intervening plaintiff, be denied and that the said complaint be dismissed.

(S.) Leo H. Pou, Assistant General Counsel, Interstate Commerce Commission, Washington 25, D. C.

(S.) Edward M. Reidy, General Counsel.

[fols. 90-125] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 126] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 8285

and

Civil Action No. 8396

FROZEN FOOD EXPRESS, Plaintiff

EZRA TAFT BENSON, Secretary of Agriculture of the United States, Intervening Plaintiff.

VS.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

COMMON CARRIER IRREGULAR ROUTE CONFERENCE OF AMERICAN TRUCKING ASSOCIATION, et al., Intervening Defendants

OPINION OF THREE-JUDGE COURT—Dated January 26, 1955

Before HUTCHESON, Chief Circuit Judge, and CONNALLY and KENNERLY, District Judges

CONNALLY, District Judge:

Filed pursuant to Secs. 1336, 1398, and 2321-2325, of Title 28; to Sec. 1009, of Title 5; and to Sec. 305(g), of

Title 49 U.S.C.A., each of the foregoing civil actions attacks and seeks to restrain enforcement of an order of the Interstate Commerce Commission. Presenting the same question of law, and substantial identity of parties, the [fol. 127] actions were consolidated for hearing and trial. The question for determination is whether a number of different commodities, as later noted herein, all of which have their origin on the farm or ranch, fall within the scope of the so-called agricultural exemption (Sec. 303(b) (6)) of Part II of the Interstate Commerce Act (Title 49, U.S.C.A., Sec. 301, et seq.) By terms of the last-mentioned statute, motor vehicles used in carrying property consisting of "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)", are exempt from Interstate Commerce Commission control (save for minor exceptions not here pertinent). The plaintiff in each of the consolidated actions, being a trucking concern holding a certificate of convenience and necessity from the Commission, desires to carry some or all of the commodities in question, unrestricted by the terms of its own certificate, or by other Commission regulation. Hence the plaintiff, supported to a considerable extent in this contention by the Secretary of Agriculture of the United States, urges upon the Court a broad interpretation of the statutory language "agricultural commodities (not including manufactured products thereof)", which would have the net result of enlarging this so-called agricultural exemption. The Commission, on the other hand, and those intervenors who align themselves with the Commission, urge upon us that most of the commodities in question, by virtue of the treatment and processing which [fol. 128] they receive, either have lost their identity as "agricultural commodities," or have become "manufactured products thereof". The result of this argument is drastically to restrict the scope of the exemption.

Civil Action 8285

In June, 1948, the Interstate Commerce Commission, of its own motion, instituted a proceeding, being MC-C-968 on its docket, in the nature of an investigation, to deter-

mine the meaning and scope of the term "agricultural commodities (not including manufactured products thereof)", as used in the above-mentioned statute. The proceeding was widely noticed in the affected trades and industries. Many interested parties, including the Secretary of Agriculture of the United States, the Commissioners of Agriculture from a number of the States, associations of shippers, motor carriers, and others, intervened. After extended hearings, during which much expert testimony was offered as to the manner and method of cleaning, preparing, packaging, and otherwise processing the various commodities in question, the Commission issued its report and order entitled "Determination of Exempted Agricultural Commodities" (52 I.C.C. Reports, Motor Carrier Cases, 511-566). In such report, the Commission announced its definition of such statutory [fol. 129] term,¹ which definition it then undertook to apply to the various commodities under consideration, and enumerated those which it found to come within the statutory language, and those which it found to fall without.² Thereupon, the proceeding was terminated and removed from the Commission docket.

¹ "In No. MC-C-968, we find that the term 'agricultural commodities' (not including manufactured products thereof)' as used in section 203 (b)(6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations."

² "We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203(b)(6) includes: (1) fruits, berries, and vegetables which remain in their natural state, including those packaged in bags or other containers, but excluding those placed in hermetically sealed containers, those frozen or

[fol. 130] The plaintiff Frozen Food Express was not a party to the proceeding before the Commission. By amended complaint filed here July 12, 1954, plaintiff alleges that it desires to carry agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificate; that the report of April 13, 1951, deprives plaintiff of its right to do so. Alleging that the action of the Commission, in entering the report in question, was arbitrary, capricious and unreasonable, that it constituted an abuse of discretion and a violation of the Commission's statutory powers, the plaintiff here seeks an injunction to restrain the Commission and the United States from enforcing or recognizing

quick frozen, and those shelled, sliced, shredded, or chopped up; (2) fruits, berries, and vegetables dried naturally or artificially; (3) seeds, including inoculated seeds, but not seeds prepared for condiment use or those which have been deawned, scarified or otherwise treated for seeding purposes; (4) forage, hay, straw, corn and sorghum fodder, corn cobs, and stover; (5) (a) hops and castor beans, and (b) leaf tobacco, but excluding redried tobacco leaf; (6) raw peanuts, and other nuts, unshelled; (7) whole grains, namely, wheat, rye, corn, rice, oats, barley and sorghum grain, not including dehulled rice and oats, or pearled barley; (8) (a) cotton in bales or in the seed, (b) cottonseed and flaxseed, and (c) ramie fiber, flax fiber, and hemp fiber; (9) live poultry, namely, chickens, turkeys, ducks, geese, and guineas; (10) milk, cream, and skim milk, including that which has been pasteurized, standardized milk, homogenized milk and cream, vitamin 'D' milk, and vitamin 'D' skim milk; (11) wool and mohair, excluding cleaned and scoured wool and mohair; (12) eggs, including oiled eggs, but excluding whole or shelled eggs, frozen or dried eggs, frozen or dried egg yolks, and frozen or dried egg albumin; (13) (a) trees which have been felled and those trimmed, cut to length peeled or split, but not further processed, and (b) crude resin, maple sap, bark, leaves, Spanish moss, and greenery; (14) sugar cane, sugar beets, honey in the comb, and strained honey."

ing the validity of such report; restraining interference with the plaintiff's proposed transportation of such agricultural commodities (not including manufactured products thereof), and seeks an order of this Court declaring the report of the Commission of April 13, 1951, to be null and void.

The Secretary of Agriculture has intervened, denominating himself "Intervening Plaintiff". He makes common cause with plaintiff in contending that a number of commodities³ are within the exemption. Several trucking associations, and some sixty southern and western railroad companies, have intervened. These interveners take a contrary view, and support the report of the Interstate Commerce Commission.

We are of the opinion that the action may not be maintained, and must be dismissed, for the reason that the report and order of the Interstate Commerce Commission of April 13, 1951, is not an "order" subject to judicial review under any of the statutes cited. The proceeding before the Commission was not an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles R. R. Co.* (273 U.S. 284), holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unani-

³ "(1) Slaughtered meat animals and fresh meats; (2) Dressed and cut-up poultry, fresh or frozen; (3) Feathers; (4) Raw shelled peanuts and raw shelled nuts; (5) Hay chopped up fine; (6) Cotton linters and cottonseed hulls; (7) Frozen cream, frozen skim milk, and frozen milk; (8) Seeds which have been deawned, scarified, or inoculated."

[fol. 132] mous Court there, aptly describes the order in issue here:

"The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, anything; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation."

The proponents of jurisdiction here rely upon *Columbia Broadcasting System v. U. S.* (316 U. S. 407). It was there held that an order of the Federal Communications Commission promulgating certain rules and regulations requiring that the Commission deny a license to broadcasting stations under certain circumstances, was subject to judicial review, upon a showing by the complaining party of strong equitable considerations. This authority is clearly distinguishable from the present case. The order there in question was entered in the exercise of the agency's rule-making power. Such orders, together with those fixing rates and those determining controversies before the administrative body, have long been recognized as subject to review (*U. S. v. Los Angeles R. R. Co.*, *supra*).

Likewise, the complaining party there showed an immediate and continuing threat of irreparable injury if the order were not reviewed. It is not so here. The statement of plaintiff that it desires to carry for hire most or all of [fol. 133] the commodities on the Commission's proscribed list, and that if it does so, the Commission likely will seek injunctive relief to restrain plaintiff, shows no basis for the intervention of a court of equity. Plaintiff will have an adequate remedy in the event of such interference.

It follows that Civil Action 8285 will be dismissed.

Civil Action 8396:

A complaint was filed December 23, 1953, with the Interstate Commerce Commission by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., charging that Frozen Food Express was and has been engaged in transporting fresh and frozen dressed poultry, and fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food readily admitted that it had been so engaged, but defended on the theory that such products all were within the agricultural exemption. The Commission found each of these products not to be within the exemption, and ordered Frozen Food Express to cease and desist from such unauthorized transportation. The present proceeding was filed by Frozen Food Express to review that order.

While the present action was pending in this Court, the [fol. 134] Secretary of Agriculture of the United States filed with the Commission his petition for leave to intervene, pursuant to Sec. 1291, of Title 7, U.S.C.A. This request was denied; and the Secretary appears here as "Intervening Plaintiff", contending (1) that the proceedings before the Commission were null and void by reason of the failure of the Commission to notify him of the pendency thereof (Sec. 1291(a), of Title 7, U.S.C.A.); (2) that the proceedings should be remanded to the Commission by reason of its error of law in having denied him leave to intervene; and (3) that the cease and desist order should be enjoined by reason of the alleged error of the Commission in holding fresh and frozen meats, and fresh and frozen dressed poultry, to be beyond the limits of the agricultural exemption.

The rail carriers and trucking associations which intervened in Civil Action 8285, also appear in this action. They support the Commission, and oppose the position taken by the plaintiff and the Secretary of Agriculture.

Armour & Company, being engaged at various points in the United States in the slaughter of livestock and the kill-

⁵ Plaintiff has abandoned the contention that meat products are within the agricultural exemption, and this commodity will not be further considered here.

ing, dressing, and sale of poultry, has intervened, urging that dressed poultry is an exempt commodity, that meat is not.

The position taken by the Secretary of Agriculture that the proceeding before the Commission was null and void in its entirety by reason of the failure of the Commission to give him notice thereof need not long detain us. The proceeding there was not one with respect to "rates, charges, [fol. 135] tariffs, and practices" relating to the transportation of farm products, and hence was not one of which the Secretary was entitled to notice under the statute (Sees. 1291 and 1622, of Title 7, U.S.C.A.). *U. S. v. Pa. R. R. Co.* (242 U. S. 208); *B. & O. R.R. Co. v. U. S.* (277 U. S. 292); *Mo. Pac. R.R. Co. v. Norwood* (283 U. S. 249). The Commission likewise did not commit an error of law in denying the Secretary's Petition of Intervention, filed there while the present proceeding was pending here.

Most able and exhaustive treatment is given the question now before us, in so far as it concerns dressed poultry, by Judge Graven of the United States District Court for the Northern District of Iowa, in *I.C.C. v. Kroblin* (113 F. Supp. 599; aff. 212 F. 2d 555, cert. den. Oct. 14, 1954). Reviewing the long struggle between the Interstate Commerce Commission in its efforts to restrict the application of the exemption in question, and the Department of Agriculture and others in seeking to expand it; reviewing the legislative history of the Motor Carrier Act of 1935, and various proposed amendments thereto; and considering the congressional intent which prompted the insertion of the agricultural exemption, Judge Graven concluded that dressed poultry constituted an "agricultural commodity", and did not constitute a "manufactured product thereof". Hence, such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry.

Counsel for the Commission argues that this Court should [fol. 136] disregard the *Kroblin* case, on the argument that the only question before us is one of the adequacy of the evidence before the Commission. It is said that the order which was entered was one within the general purview of the Commission's authority, and that if its findings are supported by "substantial evidence", this Court has no

alternative but to leave it undisturbed. While we do not quarrel with such statement as a general proposition of law, the argument is not convincing in its application to the present record. The primary facts before the Commission were without dispute and were the subject of stipulation. Reduced to simplest form, they showed that before a chicken or duck became "dressed poultry", the bird was killed, his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc. In addition, such "facts" consisted of evidence of so-called "expert" nature, that this treatment or processing of the chicken or duck rendered him a "manufactured product".

It is apparent that there is only one ultimate finding called for, namely, whether under the type of processing reflected by the record, the product falls within the statutory definition. The question then is a mixed one of law and fact, calling for the application of the processes of legal reasoning and of principles of statutory construction. The fact that the Commission's findings are supported by an "expert" who gives his opinion that a dressed chicken is a manufactured product, does not foreclose the question, [fol. 137] nor remove it from the scope of judicial review. *Baumgartner v. U. S.* (322 U. S. 665); *Lehmann v. Acheson* (206 F. 2d 592, 30); *Galena Oaks Corp. v. Scofield* — F. 2d —, 50, Dec. 29, 1954, as yet unreported).

In our opinion, fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities", and hence is not within the exemption. Since the enactment of Part II of the Interstate Commerce Act in 1935, motor vehicles used exclusively in carrying "livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)", have been exempt. By amendment in 1940, the term "ordinary" was inserted immediately before the word "livestock". The term "ordinary livestock" is defined in Sec. 20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Referring only to the live animals, "ordinary livestock" may not be tortured to include the carcasses of slaughtered meat animals, or the meat which is the product of butchering. Meat has been regarded generally in the industry as

a controlled commodity for some twenty years. Congress has dealt with the agricultural exemption on many occasions. Considering the ease with which the Congress might have added appropriate language to evidence its intent to exempt fresh or frozen meat from Interstate Commerce Commission control, if it so desired, the absence of such language indicates that no such intent was entertained.

[fol. 138] Nor may meat, fresh or frozen, be considered an "agricultural commodity" for present purposes. The exemption has treated the live meat animal in a separate generic class from "agricultural commodity" since the enactment of the statute; and if the live animal, on entering the slaughter pen or the packing house, is not an "agricultural commodity", we are unable to see how he becomes one on emerging therefrom in the form of beef or pork. The Commission was correct, in our opinion, in holding fresh and frozen meat to be non-exempt.

The enforcement of the order of the Interstate Commerce Commission, MC-C-1605; *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, is enjoined and restrained in so far as said order interfered with, enjoins or restrains the plaintiff Frozen Food Express from transporting fresh and frozen dressed poultry in interstate commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation). Other relief sought by plaintiff is denied.

Clerk will notify counsel.

Done at Houston, Texas, this 26th day of January, 1955.

(S.) Joseph C. Hutcheson, Jr., Chief Judge, Fifth Circuit; (S.) Ben C. Upmally, United States District Judge; (S.) T. M. Kennerly, United States District Judge, Concurring in Part and Dissenting in Part.

[fol. 139] KENNERLY, District Judge:

Concurring in part and dissenting in part.

I concur with all the foregoing opinion except the decision in Civil Action 8396 with respect to fresh meat and frozen meat. As to that I respectfully dissent.

I think all of Section 303(b) should be given a broad and

liberal construction, and that Section 303(b)(6) should be construed as including fresh meat and frozen meat. I think we should not only follow the reasoning of both the District Court and Court of Appeals in the *Kroblin* case with respect to dressed poultry and frozen dressed poultry, but that what is said is also applicable to fresh meats and frozen meats.

(S.) T. M. Kennerly, Judge.

[fol. 140] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action

No. 8396

FROZEN FOOD EXPRESS, ET AL., Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, ET AL.,

FINAL JUDGMENT—Filed February 23, 1955

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on November 16, 1954, before a duly constituted three-judge District Court, convened pursuant to Sections 2284 and 2321-2325, Title 28, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on January 26, 1955, filed herein its opinion, containing its findings of fact and conclusions of law; now, in accordance with the said opinion, findings, and conclusions, it is hereby

Ordered, Adjudged, and Decreed as follows:

(1) The defendants, the United States of America and the Interstate Commerce Commission, be and they hereby

are enjoined and restrained from enforcing the order of the said Commission entered July 13, 1954, in a proceeding docketed by the Commission as No. MC C-1605, and entitled "East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express", insofar as the said order requires the [fol. 141] said Frozen Food Express to cease and desist from transporting, or interfering with its transportation of, fresh and frozen dressed poultry in interstate commerce for compensation unless the motor vehicle used in the carrying of such poultry is at the same time being used to carry for compensation passengers or other property not within the exemption provided in section 203(b)(6) of the Interstate Commerce Act (49 U.S.C. 303(b)(6)); and

(2) All other relief sought by the plaintiffs herein, including the Secretary of Agriculture as intervening plaintiff, he, and the same hereby is, denied.

This the ——— day of February, 1955.

J. C. Hutcheson, Chief Judge, United States Court of Appeals for the Fifth Circuit; Ben C. Connally, United States District Judge; T. M. Kennerly, United States District Judge.

[fol. 142]. APPROVAL OF FORM OF JUDGMENT

The undersigned, as attorneys of record for parties to this civil action, hereby indicate their approval of the form of the annexed and foregoing judgment.

Carl L. Phinney, Attorney for Frozen Food Express, Plaintiff; Walter D. Matson, Attorney for Ezra Taft Benson, Secretary of Agriculture, Intervening Plaintiff; James E. Kilday, Attorney for the United States of America, Defendant; Leo H. Pou, Attorney for the Interstate Commerce Commission, Defendant; Francis W. McInerney, Attorney for East Texas Motor Freight Lines, et al., Intervening Defendants.

[fol. 143]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS,
HOUSTON DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT
BY CLASS I RAILROADS—Filed April 10, 1955

I

Notice is hereby given that the Class I railroads, a list of which is attached hereto, and made a part hereof, as Appendix A, intervening defendants in support of defendant Interstate Commerce Commission in the above-styled civil action, hereby appeal to the Supreme Court of the United States from that portion of the final judgment, entered in this action on February 23, 1955, which restrains and enjoins the Interstate Commerce Commission from enforcing its order in MC-C-1605, *East Texas Motor Freight Lines, Inc., et al v. Frozen Food Express*, in respect to the transportation by Frozen Food Express of fresh and frozen dressed poultry in Interstate Commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation).

This appeal is taken pursuant to 28 U.S.C.A. 1253 and 2101(b).

II

It is agreed by the intervening defendant railroads appealing herein that the record on appeal shall consist of the transcript of the record as requested by the defendant Interstate Commerce Commission in its Notice of Appeal [fol. 144] in this action, in which transcript the clerk will please include this Notice of Appeal.

III

The following questions are presented by this appeal:

(1) Whether the district court was in error in holding that fresh and frozen dressed poultry are "agricultural commodities" and not "manufactured products thereof" within

the meaning of Section 203(b)(6) of the Interstate Commerce Act (49 U.S.C.A. 303 (b)(6)).

(2) Whether the district court, in enjoining enforcement of and setting aside so much of the Commission's Order as relates to fresh and frozen dressed poultry, was in error in failing to give adequate weight to the interpretation given by the Interstate Commerce Commission to Section 203(b)(6) of Part II of the Interstate Commerce Act in view of the fact that the Commission has been given extensive responsibilities by the Congress of the United States of America in the interpretation and administration of the Act so as to promote sound conditions in transportation in conformity with the objectives of the National Transportation Policy.

(S.) Margaret P. Allen, 1740 Suburban Station Building, Philadelphia 4, Pennsylvania; (S.) Edwin N. Bell, Esperson Building, Houston, Texas; (S.) Joseph H. Hayes, 280 Union Station Building, Chicago 6, Illinois; (S.) Carl Helmetag, Jr., 1740 Suburban Station Building, Philadelphia 4, Pennsylvania; (S.) James W. Nisbet, 280 Union Station [fols. 145-146] Building, Chicago 6, Illinois; (S.) Charles P. Reynolds, Shoreham Building, Washington 5, D.C.; Attorneys for Class I Railroads, Intervening Defendants.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 147]

APPENDIX "A"

List of Class I Railroads

The below listed Railroads are the individual carriers which, together, are designated in the Notice of Appeal as "Class I Railroads," the intervening defendants appealing herein. When used, the term "Class I Railroads" includes each of these named Railroads:

The Atchison, Topeka & Santa Fe Railway Company.

List of Class I Railroads—Continued

Atlantic Coast Line Railroad Company.
 Chicago & Illinois Midland Railway Company.
 Chicago and Northwestern Railway Company.
 Chicago, Burlington & Quincy Railroad Company.
 Chicago Great Western Railway Company.
 Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
 Chicago, Rock Island and Pacific Railroad Company.
 The Denver and Rio Grande Western Railroad Company.
 Duluth, South Shore and Atlantic Railway Company
 (P. L. Solether, Trustee).
 Elgin, Joliet and Eastern Railway Company.
 Florida East Coast Railway Company (John W. Martin,
 Trustee).
 Fort Dodge, Des Moines & Southern Railway Company.
 Great Northern Railway Company.
 Green Bay & Western Railroad Company.
 Gulf, Mobile and Ohio Railroad Company.
 Illinois Central Railroad Company.
 The Kansas City Southern Railway Company.
 Midland Valley Railroad Company.
 The Minneapolis & St. Louis Railway Company.
 Minneapolis, St. Paul & Sault Ste. Marie Railroad Com-
 pany.
 Missouri-Kansas-Texas Railroad Company.
 Missouri Pacific Railroad Company (Guy A. Thompson,
 Trustee).
 The Nashville, Chattanooga & St. Louis Railway.
 Northern Pacific Railway Company.
 St. Louis-San Francisco Railway Company.
 St. Louis Southern Railway Company.
 Seaboard Airline Railroad Company.
 Southern Railway Company.
 Southern Pacific Company.
 The Texas and Pacific Railway Company.
 Toledo, Peoria & Western Railroad.
 Union Pacific Railroad Company.
 Wabash Railroad Company.
 The Western Pacific Railroad Company.

[fol. 148]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF TEXAS HOUSTON DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT
BY INTERSTATE COMMERCE COMMISSION—Filed April 20,
1955

I

Notice is hereby given that the Interstate Commerce Commission, a defendant in the above-styled civil action, hereby appeals to the Supreme Court of the United States from that part of the final judgment herein entered on February 23, 1955, whereby the Interstate Commerce Commission was enjoined and restrained from enforcing its order of July 13, 1954, respecting the transportation by Frozen Food Express of fresh and frozen dressed poultry in interstate commerce for compensation, the said order having been entered in a proceeding bearing the Commission's docket No. MC-C-1605, and entitled *East Texas Motor Freight Lines et al. v. Frozen Food Express*.

This appeal is taken pursuant to 28 U.S.C. 1253 and 2101(b).

[fol. 149]

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) Complaint filed August 2, 1954, by Frozen Food Express, plaintiff, including exhibits A and B thereto attached;

(b) Order constituting a three-judge court to try the case;

(c) Answer of Interstate Commerce Commission;

(d) Answer of United States of America;

(e) Motion for leave to intervene and complaint in intervention, including appendices A, B, and C, filed by Ezra Taft Benson, Secretary of Agriculture;

(f) Notation allowing Secretary of Agriculture to intervene;

(g) Answer of Interstate Commerce Commission to the complaint of the Secretary of Agriculture as intervening plaintiff;

(h) Intervention and answer of East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc.;

(i) Answer of East Texas Motor Freight Lines, Inc., et al., to the complaint of the Secretary of Agriculture;

(j) Motion for leave to intervene as defendant, filed by Common Carrier Irregular Route Conference of the American Trucking Associations, Inc.;

(k) Answer of Common Carrier Irregular Route Conference of the American Trucking Associations, Inc., to original complaint;

(l) Motion for leave to intervene as defendant, filed by American Trucking Associations, Inc.;

[fol. 150] (m) Answer of American Trucking Associations, Inc., with leave of court thereon;

(n) Order of October 6, 1954, amending original order constituting the three-judge court;

(o) Answer of Common Carrier Irregular Route Conference of American Trucking Associations, Inc., to complaint of Secretary of Agriculture;

(p) Motion of Atchison, Topeka & Santa Fe Railway Company et al., for leave to intervene;

(q) Stipulation as to intervention of Atchison, Topeka & Santa Fe Railway Company et al., and order allowing intervention;

(r) Answer of Atchison, Topeka & Santa Fe Railway Company et al.;

(s) Application of Atlantic Coast Line Railroad et al., for leave to intervene;

(t) Order allowing intervention of Atlantic Coast Line Railroad et al.;

(u) Answer of Atlantic Coast Line Railroad et al.;

(v) Motion of Armour & Company for leave to intervene;

(w) Order granting Armour & Company leave to intervene;

(x) Plea in intervention, filed by Armour & Company;

(y) Motion for judgment on the pleadings, filed by the United States of America, as defendant, and the Secretary of Agriculture, as intervening plaintiff;

(z) Motion for leave to intervene and plea in intervention of Contract Carriers Conference of American Trucking Associations, Inc., in open court;

(aa) Certified transcript of proceedings before the Interstate Commerce Commission in its docket No. MC-C-1605, introduced in evidence at the trial of this case;

[fol. 15] (bb) Order of submission on November 16, 1954;

(cc) Opinion of the court, filed January 26, 1955;

(dd) Final judgment, entered February 23, 1955;

(ee) This notice of appeal.

III

The following questions are presented by this appeal:

(1) Did the district court erroneously hold that both fresh dressed poultry and frozen dressed poultry are "agricultural commodities" and not "manufactured products thereof", within the meaning of section 203(b)(6) of the Interstate Commerce Act (49 U.S.C. 303(b)(6))?

(2) Did the district court, in setting aside and enjoining enforcement of the Commission's order insofar as it relates to fresh and frozen dressed poultry, erroneously substitute its opinion and judgment for that of the Commission upon administrative questions properly within the Commission's province to decide?

(3) Did the district court, in setting aside and enjoining enforcement of the Commission's order insofar as it relates to fresh and frozen dressed poultry, erroneously disregard or act contrary to the well-established principle of administrative law that an order of the Commission must be sustained by a reviewing court if within the scope of a statute the Commission is authorized to administer and enforce and if based upon adequate findings supported by substantial evidence on the whole record?

(S.) Edward M. Reidy, General Counsel; (S.) Leo H. Pou, Assistant General Counsel, Attorneys for Interstate Commerce Commission, Washington 25, D.C.

[fols. 152-153] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 154] SUPPLEMENTAL CERTIFICATE OF SERVICE OF NOTICE OF APPEAL BY CLASS I RAILROADS (Omitted in Printing)

[fol. 155] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT by East Texas Motor Freight Lines, Gillette Motor Transport, Jones Truck Lines, Inc., American Trucking Association, Inc., Common Carrier Conference Irregular Route and Contract Carrier Conference Thereof, Intervening Defendants—Filed April 22, 1955

I

Notice is hereby given that East Texas Motor Freight Lines, Gillette Motor Transport, Jones Truck Lines, Inc., American Trucking Association, Inc., the Common Carrier Conference Irregular Route and the Contract Carrier Conference thereof, intervening defendants in the above-captioned proceeding, hereby appeal to the Supreme Court of the United States from that portion of the final judgment entered in this action on February 23, 1955 wherein the Interstate Commerce Commission was enjoined and restrained from enforcing its order, dated July 13, 1954, in a proceeding bearing Docket Number MC-C-1605 and entitled *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, insofar as said order requires respondent Frozen Food Express to cease and desist from transporting fresh and frozen dressed poultry in interstate commerce for compensation.

This appeal is taken pursuant to Sections 1253 and 2101 (b) of the Judicial Code, 28 U.S.C.A. §§ 1253 and 2101(b).

II

The designation of the portions of the record to be certified by the clerk contained in the Notice of Appeal filed by the Interstate Commerce Commission is adopted and hereby incorporated by reference.

III

The following questions are presented by this appeal:

Did the United States District Court for the Southern District of Texas err in its judgment rendered February 23, 1955, insofar as it enjoined and restrained the Inter-[fol. 156] state Commerce Commission from enforcing its order, dated July 13, 1954, in a proceeding bearing Docket Number MC-C-1605 and entitled *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, insofar as said order requires respondent Frozen Food Express to cease and desist from transporting fresh and frozen dressed poultry in interstate commerce for compensation?

Did the United States District Court for the Southern District of Texas err in its judgment rendered February 23, 1955, insofar as it found that fresh and frozen dressed poultry were "agricultural (including horticultural) commodities (not including manufactured products thereof)" within the meaning of Section 203(b)(6) of the Interstate Commerce Act, 49 U.S.C.A. § 303(b)(6), and hence transportable by motor vehicles not subject to economic regulations by the Commission?

Did the United States District Court for the Southern District of Texas err in its judgment rendered February 23, 1955, insofar as the Court exceeded its proper function in reviewing the action of the Interstate Commerce Commission in its proceeding in Docket Number MC-C-1605, *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, for which there was warrant in the law and the facts?

Did the United States District Court for the Southern District of Texas err in its judgment rendered February 23, 1955, in setting aside and enjoining the enforcement of the Commission's order, dated July 13, 1954, in Docket Number MC-C-1605, *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, insofar as it relates

to fresh and frozen dressed poultry, erroneously substitute its opinion and judgment for those of the Commission upon questions properly left to the Commission to decide?

Respectfully submitted,

Rolland E. Kidwell, Attorney for appellants; Callaway, Reed, Kidwell & Brooks, 301 Empire Bank Building, Dallas 1, Texas; Francis W. McInerney, Attorney for East Texas Motor Freight Lines, Gillette Motor Transport, and Jones Truck Lines, Inc.; Macleay, Lynch and Macdonald, 1625 K Street, N.W., Washington, D. C.; Peter T. Beardsley, Fritz R. Kahn, Attorneys for American Trucking Associations, Inc., 1424 Sixteenth Street, N.W., Washington 6, D.C.; Clarence D. Todd, Dale C. Dillon, Attorneys for Common Carrier Conference Irregular Route and Contract Carrier Conference of the American Trucking Association, Inc.; Todd, Dillon and Curtiss, 944 Washington Building, Washington 5, D. C.

[fol. 157] CERTIFICATE OF SERVICE (Omitted in Printing)

[fol. 158] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 159] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 10, 1955

Appeals from the United States District Court for the Southern District of Texas.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted.

October 10, 1955.

[fol. 1] BEFORE THE INTERSTATE COMMERCE COMMISSION

EAST TEXAS MOTOR FREIGHT LINES, GILLETTE MOTOR TRANSPORT, INC., JONES TRUCK LINES, INC., Complainants

vs.

FROZEN FOOD EXPRESS, Defendant

STIPULATION—February 25, 1954

The parties, by their attorneys, herewith stipulate as follows, and agree that the stipulation shall serve as the answer of the Defendant and that it, together with the exhibits attached hereto or incorporated by reference, shall be the evidence in this proceeding:

I

That the following facts are true and shall be admitted in evidence in this case:

1. That East Texas Motor Freight Lines is a corporation with general offices at Dallas, Texas; has been at all times herein mentioned a motor common carrier of property subject to Part II of the Interstate Commerce Act; is the holder of certificates of public convenience and necessity issued in Docket No. MC-41432; that Exhibit 1, attached hereto, correctly states that authority and may be admitted in evidence; that a portion of that authority, and its operations conducted pursuant thereto, are competitive with those operations of the Defendant complained of in this action.

[fol. 2] 2. That Gillette Motor Transport, Inc., is a corporation with general offices at Dallas, Texas; has been at all times herein mentioned a motor common carrier of property subject to Part II of the Interstate Commerce Act; is the holder of certificates of public convenience and necessity issued in ~~Docket~~ No. MC-2309; that Exhibit 2 attached hereto, correctly states that authority and may be admitted in evidence; that a portion of that authority, and its operations conducted pursuant thereto, are competitive with those operations of the Defendant complained of in this action.

3. That Jones Truck Lines, Inc., is a corporation with general offices at Springdale, Arkansas; has been at all times herein mentioned a motor common carrier of property subject to Part II of the Interstate Commerce Act; is the holder of certificates of public convenience and necessity issued in Docket No. MC-111231; that Exhibit 3, attached hereto, correctly states that authority and may be admitted in evidence; that a portion of that authority and its operations conducted pursuant thereto, are competitive with those operations of the Defendant complained of in this action.

4. That Frozen Food Express, hereinafter called defendant, is a corporation with general offices at Dallas, Texas; has been at all times herein mentioned a motor common carrier of property subject to Part II of the Interstate Commerce Act; is the holder of certificates of public convenience and necessity issued in Docket No. MC-108207; that Exhibit 4, attached hereto, correctly states that authority and may be admitted in evidence.

5. That Defendant has held itself out in the past, is now holding itself out, and intends to continue to hold itself [fol. 3] out, to offer to the shipping public its motor common carrier service in the transportation for hire in interstate commerce of fresh and frozen meats and fresh and frozen poultry, to, from, and between various points, which operations are not specifically authorized in Defendant's certificates of public convenience and necessity, Exhibit 4.

6. That Defendant has transported for hire in interstate commerce as a carrier by motor vehicle shipments consisting of fresh meats, frozen meats, fresh poultry, and frozen poultry without such service being specifically authorized in Defendant's certificates of public convenience and necessity, including the examples specified in paragraphs 7 through 13, below.

7. Defendant, on or about September 19, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 23,061 pounds of fresh beef from Fort Worth, Texas, to Toledo, Ohio.

8. Defendant, on or about September 25, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 23,890 pounds of dressed poultry from Bentonville, Arkansas, to Turlock, California.

9. Defendant, on or about October 14, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 29,967 pounds of veal trimming from Fort Worth, Texas, to Cincinnati, Ohio.

10. Defendant, on or about October 26, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 26,325 pounds of beef and mutton from San Antonio, Texas, to Cincinnati, Ohio.

[fol. 4] 11. Defendant, on or about October 31, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 25,674 pounds of cut-up poultry from Fayetteville, Arkansas, to Norwood, Dayton, and Columbus, Ohio.

12. Defendant, on or about November 3, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 25,276 pounds of dressed poultry from Fayetteville, Arkansas, to Columbus, Ohio.

13. Defendant, on or about November 6, 1953, accepted for transportation and did transport for compensation in interstate commerce approximately 23,900 pounds of frozen turkeys from Bentonville, Arkansas, to Louisville, Kentucky.

14. That Defendants's conduct and actions in offering to transport and in transporting shipments of fresh meats, frozen meats, fresh poultry, and frozen poultry, as described in paragraphs 5 through 13, above, has diverted and will continue to divert from the Complainants herein business in which they would ordinarily participate, thus reducing their revenues and their profits.

15. That Defendant defends against this complaint upon the single proposition that the operations complained of are subject to the partial exemption of Section 203(b)(6) of the Interstate Commerce Act, in that fresh meat, frozen meat, fresh dressed poultry, and frozen dressed poultry, are not "manufactured products" of "agricultural commodities."

[fol. 5]

II

That the following facts are true and may be admitted in evidence, and the exhibits herein identified are authentic and may be admitted in evidence, these facts and exhibits

being offered particularly as evidence of the meaning of the words, "agricultural commodities (except manufactured products thereof)," as used by Congress in Section 203(b)(6), Part II, Interstate Commerce Act, 49 U.S.C. 303(b)(6), in the year of its enactment, 1935, and prior thereto, and also for any other relevant purpose in this proceeding.

16. That in years prior to 1935 and particularly in 1929, 1930, 1931, 1932, and 1933, the U. S. Department of Labor, Bureau of Labor Statistics, as authorized by Congress, caused to be prepared and printed by the Government Printing Office, monthly reports entitled, "Wholesale Prices of Commodities" in which each commodity was classified by Economic Groups, a standard classification being employed in each monthly issue, as follows:

Group I—Farm Products.

Group II—Foods.

• Group III—Hides and Leather Products.

Group IV—Textile Products.

Group V—Fuel and Lighting.

Group VI—Metals and Metal Products.

Group VII—Building Materials.

Group VIII—Chemicals and Drugs.

Group IX—House Furnishing Goods.

Group X—Miscellaneous;

[fol. 6] that is said classification cattle, hogs, sheep and poultry, when live, were classified as "Farm Products" but that fresh meats, including beef, lamb, mutton, pork and veal, and "Poultry, dressed" were classified as "Foods"; and that Exhibit 5, hereto, is an accurate copy of the pertinent portion of the issue of January, 1929, evidences the facts aforesaid, and may be admitted in evidence.

17. That in the year 1933, the National Recovery Administration, Bureau of Economic Research and Planning, as authorized by Congress, prepared and caused to be printed by the Government Printing Office a "Code for Industrial Classification," being a systematic classification by commodities of business and industry; that said classi-

fication included divisions and sections, among others the following:

• “Division A. Agriculture, Forestry, and Animal Husbandry

• “Division H. Manufacturing.

Section I. Food and Kindred Products;”

that Division A., Code 001. “Agriculture,” included:

“Stock farming. Cattle, hogs, horses, sheep, etc., Bee culture (apiaries); poultry; * * *”;

and Division H, Section I, Code 069. “Meat Packing” included the following classifications

“Meat Packing. This classification covers establishments engaged in both slaughtering cattle, hogs, sheep, or other animals, and preserving all or a part of the raw stock by canning, salting, smoking, or otherwise curing it for the trade; establishments which purchase raw stock from slaughterhouses and preserve it; includes lard.”;

[fol. 7] that Division II, Section I. “Food and Kindred Products,” also included as Code 074: “All other food products,” which, in turn, included the following classification:

“Poultry killing, dressing, and packing, wholesale;” and that Exhibit 6 hereto is an accurate copy of pages 1, 12 and 13 of the specified publication, evidences the facts aforesaid, and may be admitted in evidence.

18. That in the year 1932, the U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce, prepared and caused to be published by the Government Printing Office, as it had previously and has since continued to publish, as directed by Congress, in the Tariff Act approved June 17, 1930, “Schedule A, Statistical Classification of Imports into the United States”, effective January 1, 1933; being a systematic classification of commodities for use in administering the tariff laws; that in said classification

there was "Group 00—Animal and Animal Products, Edible", which group included sub-groups as follows:

"A. Animals, edible, Except for Breeding,"

and

"B. Meat Products";

that "Poultry, live" was assigned to sub-group "A" and that "Birds, including poultry—dead, dressed, or undressed—" was classified with "Fresh, chilled, or frozen" beef, veal, pork, mutton, lamb, goat meat, reindeer meat, venison" and other meats, under sub-group B, "Meat Products"; and that Exhibit 7, hereto, is an accurate copy of two pages of the document above described, evidences the facts aforesaid, and may be admitted in evidence.

[fol. 8] 19. That the U. S. Department of Commerce, Bureau of the Census, pursuant to direction by Congress, has published periodically a "Census of Manufactures," including publications at 5-year intervals from 1904 through 1919, and every other year from 1921 through 1939; that the said Bureau prepared a classification of industries by commodities, "Industry Classifications for the 'Census of Manufactures: 1933'" being a system for classification of reports for manufacturing establishments "by the assignment of each to the particular industry to which it belongs . . ."; printed in 1934 by the Government Printing Office; that in the said "Industry Classifications" there were the following specific classifications:

"Industry No. 123—Meat Packing, wholesale;" and

"Industry No. 126—Poultry killing, dressing, and packing, wholesale";

that these two industries, with others were included within "Industry Group 1—Food and Kindred Products" as *manufacturing industries*; and that Exhibit 8, hereto, is an accurate copy of four pages of the above-described "Industry Classifications for the Census of Manufactures: 1933," evidences the aforesaid facts, and may be admitted in evidence.

20. That the U. S. Department of Commerce, Bureau of the Census, prepared and published in 1934 for the calen-

dar 1933, "Foreign Commerce and Navigation of the United States"; that in said publication imports of merchandise into the United States were classified as to articles "in the order of Schedule A, Statistical Classification of Imports," and reported as to country of origin and volume; that in said classification and publication live meat animals were classified as "animals, edible" and beef, [fol. 9] veal, pork, mutton, lamb, other fresh meats, dead turkeys, other dead poultry, prepared poultry; and other articles were classified as "Meats"; that at page 516 there is Summary Table of Foreign Commerce "No. XV—Values of General Imports of Merchandise, By Articles, Grouped According to Degree of Manufacture and Uses (Economic Classes), Calendar Years 1932 and 1933," in which "Meats," as above defined, is further classified as dutiable under "Class C.—*Manufactured Foodstuffs*"; that Exhibit 9 hereto, is an accurate copy of pages 199-202, and 515 and 516, of said publication, evidences the facts aforesaid, and may be admitted in evidence.

21. That Schedule A, the Statistical Classification of Commodities Imported Into the United States, published by the U. S. Department of Commerce, Bureau of the Census, August 1, 1950, edition, corrected to May 1, 1952, still being published pursuant to the Tariff Act approved June 17, 1930, now uses commodity Group and Sub-Group Code Designations in which animals and their edible products are separately classified, at Page VIII as

Description	Schedule A Commodity Code No.	Sub-Group Code No.
"Group 00.—Animals and Animal Products, edible:		
"Animals, edible, except for breeding	0010600-0015500	1
"Meat Products	0018000-0035500	20

that Group 00, Animal and Animal Products, edible, includes a classification of commodities in which "Fresh, chilled or frozen: beef, veal, pork, mutton, lamb, goat meat, reindeer meat, venison" and other meat products, and "Birds, including poultry, dead, dressed, or undressed" [fol. 10] are described as "Meat Products" and assigned "Economic Class" (4); that at Page XIX, a "Code Classi-

fication of Economic Classes" is provided in which "Meat Products," as above described, is shown under Economic Class 4; that Economic Class 4 is entitled, "Agricultural *Manufactured* Foodstuffs and Beverages;" and that Exhibit 10, hereto, consisting of pages from the above-described publication, are true copies thereof, evidence the facts described above and may be admitted in evidence.

22. That the U. S. Department of Commerce, Bureau of the Census, caused to be prepared and published by the Government Printing Office in 1950, a "Product Supplement" to the "Census of Manufactures: 1947;" that the said 1947 Census of Manufactures covered all establishments primarily engaged in manufacturing as defined in the Standard Industrial Classification Manual, Volume I, dated 1947, and excluded types of activities defined as non-manufacturing; that the "Product Supplement" classifies meat packers as *manufacturers* and classifies the commodities produced by manufacturers of meat products as including:

- "Fresh beef,"
- "Fresh veal,"
- "Fresh lamb and mutton,"
- "Fresh pork,"
- "Hides, skins, and pelts,"
- "Other slaughtering plant products,"
- "Pork, processed and cured,"
- "Miscellaneous cured meats and casings,"
- "Chicken and fowl, New York dressed,"
- "Other poultry, New York dressed,"
- [fol. 11] "Chicken and fowl, eviscerated,"
- "Other poultry, eviscerated,"

and that Exhibit 11 hereto, is a true copy of portions of the document above-described, evidence the above-described facts, and may be admitted in evidence.

23. That the Executive Office of the President, Bureau of the Budget, from time to time has prepared and caused to be printed industrial classifications, as part of the continuing inter-departmental program to achieve standard nomenclature; that under date of 1940 a "Standard Industrial Classification" was produced by the "Technical Committee on Industrial Classification"; that copies of

pertinent pages of "Volume I, 'Manufacturing Industries'" are attached hereto as Exhibit 12; that Exhibit 12 shows that products of "Meat Packing, Wholesale" are classified as products of "*Manufacturing*" establishments; that Exhibit 12 is a correct copy of the described portion of the above-described document, evidences the above-stated facts and may be admitted in evidence.

24. That in construction of the classification program referred to in paragraph 23, above, technical paper No. 26 containing a "Standard Classified List of Commodities" was prepared by the Technical Committee on Standard Commodity Classification, representing the Bureau of the Budget, the War Production Board and the Procurement Division of the Department of the Treasury, and printed by the Government Printing Office in 1943; that "Major Group 61—Food, Manufactured" therein classified as *manufactured foods* the generic group, "Meat Products", including specifically "meats, fresh, chilled or frozen"; "meats cured", "meats canned", "sausage, not canned", [fol. 12] "meat preparations, not canned", "poultry dressed, fresh and frozen", "poultry, prepared or preserved, except frozen", "venison, reindeer, rabbits, and other game", and "miscellaneous meat products; and that Exhibit 13 hereto contains correct copies of pertinent pages therefrom, evidences the above-stated facts, and may be admitted in evidence.

25. That "Standard Industrial Classification Manual, Volume 1: Manufacturing Industries, Part 1, Titles and Descriptions of Industries," prepared by the Technical Committee on Industrial Classification, Division of Statistical Standards, under the direction of the Bureau of the Budget, printed by the Government Printing Office, under date of November 1945, reaffirms the classification of meat packing and poultry dressing and packing, including production of fresh dressed meat and poultry, as *manufacturing industries* and their products as *manufactured products*; and that Exhibit 14 hereto is a correct copy of portions thereof, evidences the facts stated in this paragraph, and may be admitted in evidence.

26. That a "Standard Commodity Classification, Volume I: Standard Classified Account of Commodities," prepared by the Technical Committee on Standard Commodity Classi-

fication, under direction of the Bureau of the Budget, was published December, 1946; that said list classifies "meat (including poultry and game), fresh, chilled or frozen" within "Major Group 70—Food, Manufactured" as *manufactured* foods; and that Exhibit 15 hereto is a correct copy of the preface and page 124 thereof, evidences the facts hereinabove set forth and may be admitted in evidence.

27. That the economic classification of fresh or frozen meat and fresh or frozen poultry, together with other meat [fol. 13] products, as *manufactured agricultural commodities* in Schedule A, Exhibit 7, above, also was used for classification of exports in Schedule B; that "Comparison Of Commodity Classifications Shown During 1949 Through 1952 In Schedule B," dated January, 1952, by the Bureau of Census, printed by the Government Printing Office, of which page 2 therefrom is attached hereto as Exhibit 16, evidences the facts stated in this paragraph, and that Exhibit 16 may be admitted in evidence.

28. That "Industrial Classification Code, Part IV, The Manufacturing Groups, a Reference Guide," dated November 16, 1936, of the Bureau of Research and Statistics, Division of Placement and Unemployment Insurance, Department of Labor, State of New York, is a duplicate of the classification of the Bureau of the Census, Exhibit 8 herein; that Exhibit 17, herein, is a correct copy of a portion of that Industrial Classification Code, Part IV, evidences the above-stated facts and may be admitted in evidence.

29. That the Social Security Board, Bureau of Research and Statistics, developed a classification for its users and under date of July 1, 1937, published "Industrial Classification Code for Use in Connection with Federal Old-Age Benefits and Unemployment Compensation, Part IV, The Manufacturing Groups," covering manufacturing industries and products; that the Social Security Board classification contains "Group 20, Food Manufacturing," that Group 20 includes:

"Meat Canned; Cured; Pickled; Smoked; Spread; Frozen."

"Meat Packing"

"Meat Products"

"Poultry killing, dressing, packing (for the wholesale Trade);"

that Exhibit 8 hereto is a correct copy of the cover and pages 7 and 8 of said publication, evidences the above-stated facts and may be admitted in evidence.

[fol. 14] 30. That "Industrial Classifications and Codes for Use in Public Employment Offices," dated July, 1938, published by the U.S. Department of Labor, United States Unemployment Service and printed by the Government Printing Office, classifies "Meat Packing—Wholesale" and "Poultry: Killing, Dressing, and Packing—Wholesale" as "*Manufacturing Industries*" in the "Food" group; and that Exhibit 19 hereto, is a correct copy of a portion of the said document, evidences the above-stated facts, and may be admitted in evidence.

III

That the following facts are true and the exhibits hereinafter identified are authentic and may be admitted in evidence, specifically as evidence of practices and customs now prevalent and generally in effect in 1935 and prior years, as to the growing, marketing, processing, and distribution of livestock and birds and their products and also for any other relevant purpose in this proceeding.

31. Cattle are raised on farms and ranches by growers and generally shipped alive by the growers to stockyards operated in conjunction with packing plants; that the marketing of livestock is carried on in the United States in the manner described in "Beef, Veal and Lamb Operations," Fourth Revised Edition, Prepared and Edited by the Committee on Recording of the American Meat Institute (1952), (First Edition printed in 1934), at pages 6 to 11; Exhibit 20 attached hereto is a correct reproduction of that excerpt and may be admitted in evidence.

32. Cattle slaughtering is performed as described in the publication identified in Paragraph 31 next-above; said book is incorporated herein by reference and its contents may be used in this proceeding as though the volume were physically included in the record. An outline of the

slaughtering process includes the following steps and processes:

- [fol. 15] (1) Holding the cattle in pens, including resting, watering and feeding;
- (2) Killing, including knocking, shackling, hoisting and bleeding;
- (3) Skinning and cutting, including ripping open, flooring, rimming over, turning shoulder and round, siding, breast sawing, shank pulling, tail splitting, fell cutting, etc., eviscerating, slitting, trimming;
- (4) Washing;
- (5) Stamping, scaling and grading;
- (6) Hot clothing;
- (7) Chilling;
- (8) Loading into cars or trailers; and,
- (9) Distribution.

In the afore-mentioned processes, various mechanical aids are employed including pens, runways, pulleys and chains, overhead conveyors, electrical saws, mechanical slides, water heaters, chilling systems involving the use of brine tanks, pumps and related gear and ribbon branders; and that production of frozen meats additionally involves use of extensive mechanically refrigerated systems.

33. Chickens and other poultry used for meat purposes are grown on farms and in commercial broiler houses generally marketed alive to commercial processing and packing plants; in 1934, 457,956,000 chickens and turkeys were produced, of which 403,311,000 were grown on farms and 34,030,000 were grown in commercial broiler houses; in 1948, 777,406,000 birds of these kinds were produced, of which 396,697,000 were grown on the farm, and 350,773,000 were grown in commercial broiler houses. "Agricultural Statistics, 1952" U.S. Dept. of Agriculture, U.S. Govt. Printing Office (1952) is incorporated herein by [fol. 16] reference and reference may be made to the contents of said publication as though it were physically included as an exhibit in the record in this proceeding.

34. In most instances, chickens, turkeys and other fowl are shipped alive from the grower to a processing plant, processing plants being located in some instances at large

consuming points and, in other instances, in the growing area. Chicken meat from farm-grown chickens to a large extent is a by-product of egg production. Commercial broiler production is solely for meat purposes. On some commercial egg farms, the practice is to buy pullet chicks, carry them one year for egg production and then sell the entire flock; on other commercial egg farms and usually in farm flocks of chickens the practice is to buy straight-run (pullets and cockerels) chicks, raise them to a weight of 3 or 4 pounds and then separate the pullets from the cockerels and then sell the cockerels. The laying birds are sold after one or two years of egg production; culled birds from commercial egg farms are usually sold throughout the year; birds culled from farm flocks during the year are either sold or consumed at home.

35. Production of chicken meat in commercial broiler houses is a highly specialized business. Such growers commonly raise 10,000 to 30,000 birds at one time and, through the use of broiler houses, it is not unusual for one man to do all the work in connection with raising such flocks. Three to four lots are produced and marketed in the course of a year. In 1950, approximately 40% of all chicken meat sold was grown in commercial broiler plants. Generally, poultry from commercial egg farms, from farm flocks and from commercial broiler plants is marketed alive, a very small amount of the total value marketed [fol 17] being killed and processed by the grower. The principal exception is the Long Island duck industry which processes 60% of all ducks raised in the United States and in which the killing and processing functions have been integrated.

36. Growers of commercial broiler chickens customarily furnish housing, equipment and labor while a financing agent, usually the feed dealer, furnishes chicks, feed and supplies, often under conditional sales agreements. The entire flock is sold when it reaches the desired age of 12-14 weeks. The grower and his financing agent conclude the transaction and determine their profit or loss based upon the sale price. Transportation of live birds from the broiler house to the packing plant is customarily provided by the buyer. Operation of poultry processing plants is generally in the hands of commercial packers who engage

in the processing and distribution of dressed, fresh and frozen poultry but not in growing it. In a few instances, such as the integrated Long Island duck industry and in certain grower's cooperatives, the growers maintain and operate processing plants and engage in processing and distribution as well as growing.

37. The processing of poultry in the processing plants includes the following steps:

(1) Finishing, including resting, watering and feeding the birds, usually in holding rooms operated in connection with the processing plant, up to 12 hours before killing at which time feeding stops;

(2) Killing, including shackling the feet, hanging the birds from an endless chain, sticking (cutting the throat from the inside or the outside), and bleeding, usually as the birds pass along the line;

[fol. 18] (3) Picking, either by dry picking (now little used) or wet picking: This process requires immersion in or spraying with hot water at temperatures from 128° to 190° F. The immersion in commercial plants is performed while the birds are on the endless chain and is followed by passing the birds through mechanical pickers. The mechanical picker is a machine using revolving drums equipped usually with rubber fingers. In some processes, the birds are then dipped into hot wax which, when removed after hardening, helps remove feathers;

(4) Pinning—The chain then brings the birds to tables where supplementary hand labor is used to remove pins and to complete the picking process.

(5) Singeing, which involves exposing to flame the carcasses to remove the hairs;

(6) Cropping and venting—The endless chain then brings the birds to the hands of other operators who strip the feed from the crop and remove other waste matter.

(7) Washing—The chain then brings the birds into an area where they are subject to a heavy spray.

(8) Chilling—The usual method of chilling is to place the carcasses in metal baskets which are submerged in tanks of ice water for a period long enough

to remove all body heat. In many plants, the birds are weighed before being placed in the chilling vats and they are then placed in different vats in accordance with the different weight categories. Birds to be eviscerated are not usually chilled.

(9) Eviscerating—The body cavity is cut and viscera are removed with the edible portions being cleaned separately, wrapped and re-inserted in the body cavity at the conclusion of the eviscerating process. The cutting includes removing the head, removal of the neck skin, removal of the crop and windpipe, removal of the feet, removal of the oil sac at the base of the tail, removal of the entrails, recovery of the gizzard, liver, and the heart, removal of the gall bladder, and trussing, if the bird is to be kept whole. In the event the bird is not to be kept whole, it is cut into approximately 10 pieces.

(10) Packaging—New York dressed chickens after having been weighed and chilled are usually packed in crates or barrels with inner water-proof paper wrappings and with ice included in the container. Various methods of dry wrapping are also employed. All birds to be frozen are usually placed within plio-film bags which act to prevent dehydration and freezer burn. [fol. 19] Cut-up poultry is packed in paper cartoons which are, in turn, sealed in plio-film type outer wrappings; these packages then being placed in shipping cartons and the entire carton being transported into the freezer.

(11) Freezing—For quality control, freezing of poultry requires rapid action and freezers constructed for this purpose usually require 40° below zero cold together with a wind blast of up to 70 miles an hour circulating within the freezing room. After freezing, the frozen birds are stored in a holding room constructed to hold the products at 0° F.

38. The plants engaged in the killing of cattle and birds and in the production of meat products (including poultry) consist generally of the large meat packing companies and companies engaged in the distributing and wholesaling of meat and poultry. The "Biennial Census of Manufac-

turers, 1933," U. S. Department of Commerce, Bureau of the Census, included reports from 437 plants engaged in production of poultry products and 1230 meat packing plants. Ten packers alone processed approximately 75% of Federally inspected meat in 1942. Transportation of the finished meat and poultry products is accomplished primarily through use of common carriers by rail and by motor which provide refrigerated cars and truck-trailers for that purpose. Distribution from the packing plants is made to branch houses, chain stores, wholesalers, and retailers.

39. The exhibits listed in this paragraph and attached hereto are authentic copies and may be admitted in evidence:

Exh. 21—"Table 16—Livestock: Federally-inspected slaughter, by months and seasons, and total slaughter, yearly, in the United States, 1935-51," comprising pages 17 and 18 of Statistical Bulletin No. 118, "Livestock Market News Statistics and Related Data, 1951," U. S. D. A., P. & M. A., November 1952.

[fol. 20] Exh. 22—"Livestock Slaughter—Meat and Lard Production, 1950 and 1951," U. S. D. A. Bur. of Agricultural Economics, May 23, 1952, the entire document consisting of one sheet (two pages).

Exh. 23—"Livestock Slaughter—Meat and Lard Production, 1951-1952," U. S. D. A., Bur. of Agricultural Economics, May 6, 1953, the entire document consisting of one sheet (two pages).

Exh. 24—"Livestock Slaughter by States—December, 1953," U. S. D. A., Agriculture Marketing Service, February 3, 1954, the entire document consisting of five sheets (9 pages).

Exh. 25—"Table 509—Meats and Lard: Production by class of slaughter, United States, 1935-51," being page 446 of "Agricultural Statistics, 1952."

Exh. 26—"Table 510—Meats and meat food products: Quantity prepared and processed under Federal inspection, 1945-51."

Exh. 27—"Regulations Governing the Meat Inspection of the United States Department of Agriculture," Edition of June 1952, U. S. D. A., Agricultural Re-

search Administration, Bureau of Animal Industry; a booklet of 209 pages.

Exh. 28—"Table 578—Chickens: Number on farms, and value, United States, Jan. 1, 1909-52," which is page 508, "Agricultural Statistics, 1952."

Exh. 29—"Table 582—Chickens: Farm production, disposition, cash receipts, and gross income, by States, 1950," which comprises pages 512 and 513 of "Agricultural Statistics, 1952."

Exh. 30—"Table 583—Chickens: Farm Production, disposition, cash receipts, and gross income, by States, 1951," which comprises pages 514 and 515 of "Agricultural Statistics, 1952."

Exh. 31—"Table 587—Chickens: * * *;" and "Table 588—Chickens: * * *," which is page 519 of "Agricultural Statistics, 1953."

Exh. 32—"Regulations Governing the Grading and Inspection of Poultry and Edible Products Thereof * * *;" U.S.D. of Agric., P. & M. A., Poultry Branch, effective May 15, 1953.

[fol. 21] In witness whereof this stipulation is signed:

For the Complainants: By: (S.) Francis W. McIn-
erny. At Washington, D. C. Date February 24,
1954. For the Defendant: By: (S.) Carl Phinney.
At Dallas, Texas. Date 23 Feb. 1954.

U. S. DEPARTMENT OF LABOR
JAMES J. DAVIS, Secretary
BUREAU OF LABOR STATISTICS
ETHELBERT STEWART, Commissioner

Wholesale Prices OF Commodities

January, 1929



HB 235
89.26 A45

WHOLESALE PRICES OF COMMODITIES, JANUARY, 1929

In continuation of the plan of publishing each month a detailed statement of wholesale prices of important commodities, there is presented herewith a list of the more important commodities included in the bureau's index numbers, together with the latest record of price changes available at the time of its preparation. For convenience of comparison, index numbers based on average prices in the year 1926 as 100 are shown in addition to the absolute money prices. Index numbers for the several groups and subgroups also are shown in the table. The purchasing power of the 1926 dollar as computed from the index numbers of the various groups of commodities is likewise included.

WHOLESALE PRICES OF COMMODITIES, JANUARY AND DECEMBER, 1928, AND JANUARY, 1929

Commodity	Average prices			Index numbers (1926=100.0)		
	January, 1928	December, 1928	January, 1929	January, 1928	December, 1928	January, 1929
ALL COMMODITIES				98.3	98.7	97.3
GROUP I.—FARM PRODUCTS				106.1	103.6	106.9
(a) Grains				104.7	94.3	98.5
Barley, feeding, per bushel, Chicago	\$0.932	\$0.574	\$0.600	134.3	82.7	86.5
Corn, per bushel, Chicago—						
Contract grades	.888	.858	.915	116.7	113.1	120.5
No. 3, mixed	.857	.835	.901	116.5	113.3	122.4
Oats, No. 2, white, per bushel, Chicago	.564	.486	.523	131.0	112.9	121.5
Rye, No. 2, per bushel, Chicago	1.086	1.059	1.044	113.7	111.0	109.4
Wheat, per bushel—						
No. 2, red winter, Chicago	1.423	1.414	1.405	92.4	91.7	91.1
No. 2, hard, Kansas City	1.396	1.138	1.159	93.3	76.1	77.4
No. 1, northern spring, Minneapolis	1.293	1.172	1.217	83.5	75.7	78.6
No. 2, dark northern spring, Minneapolis	1.433	1.152	1.200	92.1	74.1	77.1
No. 1, hard white, Portland, Oreg	1.446	1.490	1.502	100.7	103.8	104.6
No. 2, red winter, St. Louis	1.515	1.394	1.437	97.4	89.7	92.4
(b) Livestock and poultry				100.3	99.1	102.1
Cattle, per 100 pounds, Chicago—						
Calves, good to choice, vealers	12.925	14.275	15.563	106.5	117.6	128.2
Cows—						
Fair to good	8.215	8.185	8.038	142.5	142.0	139.4
Good to choice	9.400	9.110	8.913	144.9	140.4	137.4
Steers—						
Fair to good	14.000	12.550	12.250	159.8	143.2	139.8
Good to choice	15.800	14.175	13.531	165.8	148.8	142.0
Hogs, per 100 pounds, Chicago—						
Fair to choice, heavy butchers	8.320	8.780	9.100	67.4	71.2	73.8
Fair to choice, light butchers	8.420	8.765	9.269	64.2	66.8	70.7
Sheep, per 100 pounds, Chicago—						
Ewes, native, all grades, fair to best	6.050	6.275	8.388	91.8	95.2	127.2
Lambs, western, fair to good	12.650	13.775	15.594	92.3	100.5	113.8
Wethers, fed, poor to best	7.250	8.200	10.344	88.6	100.2	126.4
Poultry, live fowls, per pound—						
Chicago	.226	.234	.287	80.7	93.0	111.1
New York	.282	.281	.335	94.7	94.5	112.3
(c) Other farm products				110.7	110.9	111.3
Beans, medium, per 100 pounds, New						
Galveston	6.825	10.000	10.425	125.4	183.8	191.6
Cotton, middling, per pound—						
Galveston	.187	.194	.194	109.5	116.0	113.9
New Orleans	.186	.194	.191	110.3	115.4	113.2
New York	.190	.205	.202	108.4	117.1	115.2
Eggs, fresh, per dozen—						
Western, Boston	.465	.440	.382	140.5	120.6	107.2
Firsts, Chicago	.434	.387	.390	129.6	115.6	105.5
Extra firsts, Cincinnati	.434	.478	.497	127.6	128.6	111.9

**WHOLESALE PRICES OF COMMODITIES, JANUARY AND DECEMBER, 1928, AND
JANUARY, 1929—Continued**

Commodity	Average prices			Index numbers (1926=100.0)		
	January, 1928	Decem- ber, 1928	January, 1929	Jan- uary, 1928	De- cem- ber, 1928	Jan- uary, 1929
GROUP I.—FARM PRODUCTS—Contd.						
(c) Other farm products—Continued.						
Eggs, fresh, per dozen—Continued.						
Candled, New Orleans.....	\$0.362	\$0.351	\$0.317	106.7	103.7	93.6
Firsts, New York.....	.450	.368	.364	126.4	102.8	102.2
Extra firsts, Philadelphia.....	.500	.453	.447	126.5	114.5	103.7
No. 1 extras, San Francisco.....	.309	.349	.293	103.7	117.2	98.4
Fruit—						
Apples, fresh—						
Baldwins, per barrel—						
Chicago.....	7.250	5.094	5.525	176.8	124.2	134.7
New York.....	7.025	5.438	5.575	174.2	134.9	138.3
Winesaps, medium grade, per box, Portland, Oreg.....	3.250	2.100	2.120	152.4	98.5	99.4
Lemons, choice or fancy, California, per box, Chicago.....	9.235	7.188	6.600	165.6	129.0	118.5
Oranges, choice, California, per box, Chicago.....	5.825	6.000	6.475	97.8	100.7	108.7
Hay, per ton—						
Alfalfa, Kansas City.....	21.375	26.063	27.938	101.6	123.9	132.8
Clover, mixed, No. 1, Cincinnati.....	16.200	22.375	22.700	72.9	100.7	102.2
Timothy, No. 1, Chicago.....	17.750	23.500	23.500	75.6	100.1	100.1
Hops, prime to choice, Pacific, per pound, Portland, Oreg.....	.215	.183	.191	89.2	75.8	79.3
Milk, fluid, per 100 pounds—						
Chicago.....	2.760	2.760	2.910	98.8	98.8	104.2
New York.....	3.960	4.030	4.030	109.9	111.2	111.2
San Francisco.....	3.350	3.140	3.140	107.0	100.3	100.3
Peanuts, per pound, Norfolk.....	.063	.053	.053	127.3	106.1	107.1
Seeds—						
Alfalfa, per 100 pounds, Kansas City.....	17.250	25.000	24.000	104.7	151.7	145.7
Clover, per 100 pounds, Chicago.....	29.170	28.000	30.077	91.7	88.0	94.5
Flaxseed, per bushel, Minneapolis.....	2.182	2.363	2.415	93.7	101.5	103.7
Timothy, per 100 pounds, Chicago.....	3.500	5.115	5.250	57.3	83.7	85.9
Tobacco, leaf, average warehouse sales, per 100 pounds, Kentucky.....	23.277	25.691	26.134	274.2	303.3	332.1
Vegetables, fresh—						
Onions, per 100 pounds, Chicago.....	2.575	4.406	4.625	165.2	180.1	197.2
Potatoes, white, per 100 pounds—						
Boston.....	1.969	1.144	1.265	55.9	32.4	35.9
Chicago.....	1.705	.963	1.040	56.6	31.9	34.5
New York.....	2.164	1.448	1.550	57.3	38.3	41.0
Portland, Oreg.....	1.950	1.425	1.450	67.9	49.6	50.5
Potatoes, sweet, per 1/4 bushel, Phila- delphia.....	.950	.988	1.175	62.4	64.5	76.8
Wool, per pound, Boston—						
Ohio, grease basis—						
Fine clothing.....	.390	.380	.380	97.1	94.6	94.6
Fine delaine.....	.480	.460	.460	102.8	98.6	98.6
Half blood.....	.490	.510	.510	106.1	110.5	110.5
Medium grades.....	.500	.560	.560	109.5	122.6	122.6
Territory, scoured basis—						
Staple, fine and fine medium.....	1.162	1.138	1.135	100.9	98.4	98.6
Half blood.....	1.072	1.110	1.110	102.4	106.0	106.0
Foreign—						
Argentine crossbreds, quarter blood, grease basis.....	.335	.335	.335	118.2	118.2	118.2
Australian, Geelong, 56's, scoured basis.....	.690	.740	.740	101.7	109.1	109.1
Montevideo, one-fourth blood, 50's, grease basis.....	.433	.455	.456	117.3	123.4	123.5
GROUP II.—FOODS						
(a) Butter, cheese, and milk						
Butter, creamery, per pound—				100.0	110.0	100.0
Boston—						
Extra.....	.450	.499	.479	100.3	113.6	109.1
Firsts.....	.456	.479	.467	106.3	113.7	110.8
Seconds.....	.425	.456	.448	108.6	116.5	114.4
Chicago—						
Extra.....	.484	.490	.466	112.8	114.3	108.6
Extra firsts.....	.454	.478	.456	109.7	115.4	110.0
Firsts.....	.423	.460	.445	108.3	117.8	114.1
Cincinnati, as to score.....	.450	.495	.471	114.0	125.4	119.3

**WHOLESALE PRICES OF COMMODITIES, JANUARY AND DECEMBER, 1928, AND
JANUARY, 1929—Continued**

Commodity	Average prices			Index numbers (1926=100.0)		
	January, 1928	December, 1928	January, 1929	January, 1928	December, 1928	January, 1929
GROUP II.—FOODS—Continued						
(a) Butter, cheese, and milk—Continued.						
Butter, creamery, per pound—Contd.						
New Orleans—						
Fancy.....	\$0.501	\$0.536	\$0.521	105.3	112.7	109.5
Choice.....	.455	.488	.484	99.3	105.4	105.6
New York—						
Extra.....	.489	.508	.481	110.2	114.5	108.5
Firsts.....	.457	.480	.467	108.9	114.5	111.2
Seconds.....	.419	.450	.447	107.9	116.0	115.1
Philadelphia—						
Extra.....	.499	.511	.485	109.7	112.5	108.7
Extra firsts.....	.488	.498	.476	110.0	112.4	107.5
Firsts.....	.460	.466	.460	110.7	114.7	113.1
St. Louis, extra.....	.488	.513	.484	110.9	116.4	110.0
San Francisco—						
Extra.....	.465	.495	.462	106.7	113.6	106.0
Firsts.....	.456	.485	.455	109.2	116.0	108.8
Cheese, whole milk, per pound—						
Chicago.....	.264	.237	.228	121.7	109.2	105.2
New York.....	.261	.258	.254	114.9	113.4	111.6
San Francisco.....	.239	.231	.224	104.4	101.1	97.9
Milk, condensed, per case, New York.....	6.000	6.175	6.175	102.4	105.4	105.4
Milk, evaporated, per case, New York.....	4.575	4.575	4.575	104.1	104.1	104.1
Milk, fluid. (See Farm products.)						
(b) Meats						
Beef, fresh, carcass, steers, per pound—				91.6	102.3	104.7
Chicago.....	.220	.245	.240	134.0	149.2	146.2
New York.....	.230	.245	.245	134.7	143.5	143.5
Beef, cured, family, per barrel (200 pounds), New York.....	33.000	33.000	29.300	140.5	140.5	124.7
Lamb, fresh, per pound, Chicago.....	.230	.228	.275	87.9	87.0	105.1
Mutton, fresh, dressed, per pound, New York.....	.133	.123	.146	92.2	85.0	101.2
Pork, cured—						
Bacon, per pound, Chicago.....	.316	.229	.223	104.0	75.3	73.2
Hams, per pound, Chicago.....	.212	.244	.232	68.8	79.4	75.5
Mess, per barrel (200 pounds), New York.....	32.800	33.250	30.025	87.6	88.8	80.2
Sides, clear, per pound, Chicago.....	.161	.163	.151	80.4	81.0	75.2
Sides, rough, per pound, Chicago.....	.156	.133	.140	78.8	67.1	70.7
Pork, fresh (composite price), per pound—						
Chicago.....	.143	.144	.159	64.0	64.3	71.0
Poultry, dressed, per pound—						
Chicago.....	.200	.225	.257	73.9	83.2	95.0
New York.....	.288	.280	.310	91.8	89.2	98.8
Veal, fresh, good, per pound, Chicago.....	.196	.208	.240	105.6	110.9	128.3
(c) Other foods						
Beans. (See Farm products.)						
Bread, loaf, per pound before baking—						
Chicago.....	.075	.075	.075	100.0	100.0	100.0
Cincinnati.....	.071	.071	.071	100.3	100.3	100.3
New Orleans.....	.070	.066	.066	97.8	92.0	92.0
New York.....	.070	.070	.070	100.0	100.0	100.0
San Francisco.....	.069	.069	.069	99.8	99.8	99.8
Cocoa beans, Arriba, per pound, New York.....	.170	.131	.130	94.0	72.6	71.8
Coffee, Brazilian grades, per pound, New York—						
Rio, No. 7.....	.146	.181	.183	81.2	99.2	100.3
Santos, No. 4.....	.221	.232	.240	98.9	104.0	107.8
Copra, South Sea, per pound, New York.....	.054	.050	.048	92.8	86.2	82.8
Crackers, soda, per pound, New York.....	.140	.150	.140	100.0	107.1	100.0
Eggs. (See Farm products.)						
Fish—						
Cod, pickled, cured, per 100 pounds, Gloucester, Mass.....	7.500	8.250	8.200	103.3	111.7	113.7
Herring, pickled, per pound, New York.....	.150	.190	.190	113.6	143.8	143.8
Mackerel, salt, per pound, New York.....	.110	.180	.180	110.0	180.0	180.0
Salmon, canned, Alaska, red, per dozen cans, factory.....	3.200	2.625	2.499	96.2	78.9	75.1
Salmon, smoked, Alaska, per pound New York.....	.420	.500	.480	109.6	130.4	125.2

EXHIBIT "6"

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CODE FOR INDUSTRIAL CLASSIFICATION

DIVISION A. AGRICULTURE, FORESTRY, AND ANIMAL HUSBANDRY

Code

001. *Agriculture.*Cotton growing; or in connection with preparing cotton for market, *except ginning, compressing, baling*Grain farming. Alfalfa, barley, buckwheat, corn, hay, oats, *rice, rye, wheat, etc.*

Horticulture. Growing fruits, flowers, nuts, vegetables; landscape gardeners, nurserymen.

Stock farming. Cattle, hogs, horses, sheep, etc. Bee culture (apiaries); poultry; fur-bearing animals, as foxes; ostrich farming; silkworm culture; feeding stock for market (not stockyards, see 017); dairy farming, *except milking, etc.*

Other agricultural pursuits. Operating agricultural machinery as baling (not cotton; see 016); sheep shearing, threshing, spraying; general farming; growing coffee, hemp, hops, medicinal plants, mushrooms, rubber, sugar, tobacco.

Lessors or holders of farm lands.

002. *Related industries.*

Fishing. Clams, crabs, fish, nonfood shells, oysters, pearls, sponges; fish hatcheries; oyster culture.

Ice harvesting. Natural ice (manufacture of ice not included, see 074).

Other related industries. Maple-sugar camps; hunting or trapping for furs or feathers; seal hunting. (Not including the gathering of naval stores, see 092.)

Lessors or holders of timber lands.

Bottling spring water.

DIVISION H. MANUFACTURING

SECTION I. FOOD AND KINDRED PRODUCTS (073)

062. *Beverages.* Root beer, ginger ale, carbonated beverages, coca cola, grape juice, etc. (Not including tomato juice, cranberry juice, or kraut juice (see 072), nor the bottling of spring water (see 002), nor wines, cordials, or whiskey (see 109).)
063. *Cereal beverages,* beer and "near beer."
064. *Bread and other bakery products.*
Bread, biscuit, crackers, pretzels, pies, cakes, etc.
065. *Butter.*
066. *Confectionery* (not including chocolate and cocoa products, see 074). Candies of all kinds, stick licorice, corn balls, salted nuts, etc.
067. *Flour and other grain mill products* (not including feeds, prepared, for animals and fowls, see 074). Wheat, corn, rye, buckwheat, rice, and barley, flour and meal, cracked corn, shorts, middlings, feed for livestock, etc.
068. *Ice cream.* Water ices, sherberts, chocolate covered ice cream, etc.
069. *Meat Packing.* This classification covers establishments engaged in both slaughtering cattle, hogs, sheep, or other animals and preserving all or a part of the raw stock by canning, salting, smoking, or otherwise curing it for the trade; establishments which purchase raw stock from slaughterhouses and preserve it; includes lard.
070. *Sugar, beet.*
071. *Sugar refining; cane.* This classification embraces establishments engaged wholly or mainly in refining raw cane sugar, practically all of which is imported.
072. *Canning and preserving: Fish, crabs, shrimps, oysters, and clams.* Canned, pickled, smoked, and dried fish, and canned crabs, lobsters, shrimps, oysters, and clams. (Does not cover establishments engaged solely in shucking oysters, see 002.)
073. *Canning and preserving: Fruits and vegetables; pickles, jellies, preserves, and sauces.* Canned and preserved fruits and vegetables; processed and dried fruits and vegetables; preserves, jellies, pickles, sauces, dressings, catsup, prepared mustard, etc.
074. *All other food products.*
Cereal preparations. Cereal breakfast foods, hominy, cracked wheat, rolled oats, hulled corn, self-rising flour, cereal, coffee substitutes, etc.
Coffee and spice, roasting and grinding.
Corn sirup, corn sugar, corn oil, and starch. Corn sirup; corn sugar; corn, wheat, potato, and root starch; corn oil; corn oil cake and meal; etc.
Cheese.
Condensed and evaporated milk. Condensed milk, evaporated milk, powdered milk, sugar of milk; dried casein (not plastic).
Chewing gum.

Chocolate and cocoa products, not including confectionery.

Chocolate, cocoa, cocoa butter, broma, and other products of the nut of the cocoa tree.

Feeds, prepared, for animals and fowls. Feeds prepared from ground grain and other ingredients such as alfalfa, molasses, bone meal, etc.; ground oyster shells.

Flavoring extracts and flavoring sirups. Flavoring extracts, pastes, and powders; colors for bakers and confectioners; flavoring sirups; crushed fruits for soda-fountain use.

Food preparations, not elsewhere classified. All food preparations for human consumption which are not classifiable in any of the other industries in the group. Blended and compounded sirups for table use; peanut butter; preparations such as mincemeat, potato chips, and plum and fig puddings; malted-milk products; ice-cream cones, etc.

Ice manufactured. Ice manufactured for sale.

Shortenings (other than lard, see 069), vegetable cooking oils, and salad oils. Shortenings compounded of both animal and vegetable oils and fats and those made of vegetable oils only; vegetable cooking oils and vegetable salad oils.

Macaroni, spaghetti, vermicelli, and noodles.

Malt. Malt, made chiefly from barley but to some extent from other grains.

Oleomargarine and other margarines, not made in meat-packing establishments.

Peanuts, walnuts, and other nuts, processed or shelled. Bleached and shelled walnuts; polished pecans; graded and shelled peanuts; etc.

Poultry killing, dressing, and packing, wholesale.

Rice cleaning and polishing.

Sausage, meat puddings, headcheese, etc., and sausage casings, not made in meat-packing establishments.

Sugar, cane, not including products of refineries. This classification covers all establishments engaged primarily in the manufacture of sugar (raw or refined), molasses, and sirups, from cane.

Vinegar and cider.

U. S. DEPARTMENT OF COMMERCE
R. D. CHAPIN, Secretary
BUREAU OF FOREIGN AND DOMESTIC COMMERCE
FREDERICK M. FEIKER, Director

SCHEDULE A

**STATISTICAL CLASSIFICATION
OF IMPORTS INTO THE
UNITED STATES**

**WITH RATES OF DUTY
AND REGULATIONS GOVERNING THE
PREPARATION OF MONTHLY AND
QUARTERLY STATEMENTS OF IMPORTS**

EFFECTIVE JANUARY 1, 1933



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1933

IMPORT SCHEDULE

Group 00. ANIMALS AND ANIMAL PRODUCTS, EDIBLE

Class No.	Commodity	Unit of quantity	Code number	Rate of duty	Tariff paragraph
A. ANIMALS, EDIBLE, EXCEPT FOR BREEDING					
Cattle:					
0011. 0	Weighing less than 700 lbs., each	No.	20	2½¢ lb.	701
		Lb.	1		
0011. 2	Weighing 700 lbs. or over, each	No.	20	3¢ lb.	702
		Lb.	1		
0012. 0	Sheep and lambs	No.	20	\$3 each	703
0012. 2	Goats	No.	20	\$3 each	
0013. 0	Hogs	Lb.	1	2¢ lb.	703
Poultry, live:					
0014. 0	Turkeys	Lb.	1	8¢ lb.	711
0015. 0	Chickens, ducks, geese, and guineas	Lb.	1	8¢ lb.	
0015. 5	Baby chicks of poultry	No.	20	4¢ each	
B. MEAT PRODUCTS					
Fresh, chilled, or frozen:					
0018. 0	Beef	Lb.	1	6¢ lb.	701
0019. 0	Veal	Lb.	1	6¢ lb.	
0020. 0	Pork	Lb.	1	2½¢ lb.	703
0021. 0	Mutton	Lb.	1	5¢ lb.	702
0022. 0	Lamb	Lb.	1	7¢ lb.	
0023. 1	Goat meat	Lb.	1	5¢ lb.	704
0023. 2	Reindeer meat	Lb.	1	6¢ lb.	
0023. 3	Venison	Lb.	1	6¢ lb.	
0023. 5	Game (except birds), n. s. p. f. (specify by name).	Lb.	1	6¢ lb.	706
0023. 6	Edible offal (livers, sweetbreads, etc.)	Lb.	1	6¢ lb. or 20% ¹	
0023. 9	Meats, n. s. p. f.	Lb.	1	6¢ lb. or 20% ¹	712
	Birds, including poultry—				
	Dead, dressed or undressed—				
0024. 0	Turkeys	Lb.	1	10¢ lb.	706
0025. 2	Chickens, ducks, geese, and guineas	Lb.	1	10¢ lb.	
0025. 3	Birds, n. s. p. f. (including game birds)	Lb.	1	10¢ lb.	
Prepared or preserved:					
0026. 0	Birds, including poultry, prepared or preserved, n. s. p. f.	Lb.	1	10¢ lb.	706
	Canned meats—				
0028. 0	Beef, including corned beef	Lb.	1	6¢ lb. or 20% ¹	
0028. 1	Meats, n. s. p. f., including liver paste (specify by name).	Lb.	1	6¢ lb. or 20% ¹	703
0029. 0	Beef and veal, pickled or cured	Lb.	1	6¢ lb. or 20% ¹	
	Pork—				706
0030. 0	Hams, shoulders, and bacon	Lb.	1	3½¢ lb.	
0031. 0	Pickled, salted, and other	Lb.	1	3½¢ lb.	706
0032. 5	Prepared or preserved meats, n. s. p. f. (specify by name).	Lb.	1	6¢ lb. or 20% ¹	
Sausage casings:					
0034. 0	Sheep, lamb, and goat casings	Lb.	1	Free	1755
0035. 0	Weasands, bladders, and intestines	Lb.	1	Free	
0035. 2	Sausage casings, n. s. p. f. (specify by name)	Lb.	1	Free	

¹ Indicate specific rate by 1 and ad valorem by 2 in miscellaneous column.

INDUSTRIES—ALPHABETICAL LIST—Continued

[The figure or figures *preceding* the last two in each industry number indicate the group number. Industries marked (*) require special schedules]

Ind. No.	INDUSTRY
135	*Liquors, vinous. <i>Transferred to Group 1 from Group 6. Industry number formerly 620.</i>
506	*Lithographing.
1406	*Locomotives (other than electric), not made in railroad repair shops.
704	Lubricating oils and greases, not made in petroleum refineries.
311	*Lumber and timber products not elsewhere classified.
121	Macaroni, spaghetti, vermicelli, and noodles.
1318	*Machine-tool accessories and machinists' precision tools and instruments.
1307	*Machine tools.
122	*Malt.
1014	Marble, granite, slate, and other stone products.
312	Matches.
238	Mats and matting, grass and coir.
1624	Mattresses and bed springs not elsewhere classified.
123	*Meat packing, wholesale.
1306	Meters (gas, water, etc.) and gas generators.
239	Millinery.
1015	Minerals and earths, ground or otherwise treated.
313	Mirror and picture frames
1016	Mirrors and other glass products made of purchased glass.
1612	Miscellaneous articles not elsewhere classified.
1625	Models and patterns, not including paper patterns.
1626	*Motion pictures, not including projection in theaters.
1407	*Motor-vehicle bodies and motor-vehicle parts.
1408	*Motor vehicles, not including motorcycles.
1409	Motorcycles, bicycles, and parts.
621	Mucilage, paste, and other adhesives, except glue and rubber cement.
1627	Musical-instrument parts and materials: Piano and organ.
1628	Musical instruments and parts and materials, not elsewhere classified.
1629	Musical instruments: Organs.
1630	Musical instruments: Pianos.
1113	*Nails, spikes, etc., not made in wire mills or in plants operated in connection with rolling mills.
1211	Needles, pins, hooks and eyes, and snap fasteners.
240	Nets (fish) and seines.
1212	*Nonferrous-metal alloys; nonferrous-metal products, except aluminum, not elsewhere classified.
622	Oil, cake, and meal, cottonseed.
623	Oil, cake, and meal, linseed.
624	Oils, essential.
625	Oils not elsewhere classified.

INDUSTRIES—ALPHABETICAL LIST—Continued

[The figure or figures *preceding* the last two in each industry number indicate the group number. Industries marked (*) require special schedules]

Ind. No.	INDUSTRY
241	Oilcloth.
124	Oleomargarine and other margarines, not made in meat-packing establishments.
1631	Optical goods.
626	*Paints and varnishes.
407	*Paper.
408	*Paper goods not elsewhere classified.
627	*Patent or proprietary medicines and compounds.
1632	Paving materials: Blocks (except brick and stone) and mixtures.
125	<i>Peanuts, walnuts, and other nuts, processed or shelled. Abandoned as a separate industry classification.</i>
1633	Pencils, lead (including mechanical).
1634	Pens, fountain and stylographic; pen points, gold, steel, and brass.
628	*Perfumes, cosmetics, and other toilet preparations.
705	*Petroleum refining.
507	*Photo-engraving, not done in printing establishments.
1636	Photographic apparatus and materials and projection apparatus.
1637	Pipes (tobacco).
314	*Planing-mill products (including general millwork), made in planing mills not connected with sawmills.
1114	*Plumbers' supplies, not including pipe or vitreous-china sanitary ware.
908	Pocketbooks, purses, and cardcases.
1017	*Pottery, including porcelain ware.
126	Poultry killing, dressing, and packing, wholesale.
1676	*Power laundries.
508	*Printing and publishing, book and job.
509	*Printing and publishing, music.
510	*Printing and publishing, newspaper and periodical.
511	Printing materials, not including type or ink.
315	Pulp goods and molded composition products.
410	*Pulp (wood and other fiber).
1309	*Pumps (hand and power) and pumping equipment.
1319	*Radio apparatus and phonographs.
1501	Railroad repair shops, electric.
1502	Railroad repair shops, steam.
629	*Rayon and allied products
1310	*Refrigerators and refrigerating and ice-making apparatus.
316	<i>Refrigerators and refrigerator cabinets, exclusive of mechanical refrigerating equipment. Abandoned as a separate classification; combined with "Refrigerators, mechanical," formerly a separate classification in Group 13 under title "Refrigerators and refrigerating and ice-making apparatus."</i>

INDUSTRY GROUP 1.—FOOD AND KINDRED PRODUCTS—Continued

OFFICE GROUP 1—Continued

Ind. no.	CLASSIFICATION	Forin no.
113	Corn sirup, corn sugar, corn oil, and starch Corn sirup; corn sugar; corn, wheat, potato, and root starch; corn oil; corn-oil cake and meal; etc.	113
114	Feeds, prepared, for animals and fowls (see also Flour and other grain-mill products) Feeds prepared from ground grain (either milled by the establishment or purchased) and other ingredients such as alfalfa, molasses, bone meal, etc.; ground oyster shells.	116
115	Flavoring extracts and flavoring sirups Flavoring extracts, pastes, and powders; colors for bakers and confectioners; flavoring sirups; crushed fruits for soda-fountain use.	100
116	Flour and other grain-mill products (see also Cereal preparations; Feeds, prepared, for animals and fowls) Of the establishments engaged in milling grains, those whose chief products are flour and meal are classified in this industry, whereas those whose chief products are cereal preparations or prepared feeds are classified in the "Cereal preparations" or the "Feeds, prepared, for animals and fowls" industry.	116
117	Food preparations not elsewhere classified All food preparations for human consumption which are not classifiable in any of the other industries in the group. Meat products such as boiled and boneless ham; blended and compounded sirups for table use; peanut butter; preparations such as mincemeat, potato chips, and plum and fig puddings; malted-milk products; ice-cream cones, etc. Flavoring sirups, corn sirup, cane-sugar sirup, and beet-sugar sirup are <i>not</i> included, as these products belong to other classifications.	100
118	Ice cream	103
119	Ice, manufactured Ice manufactured for sale.	119
133	Liquors, distilled, and ethyl alcohol	100
134	Liquors, malt	101
135	Liquors, vinous	101
121	Macaroni, spaghetti, vermicelli, and noodles	100
122	Malt Malt, made chiefly from barley but to some extent from other grains.	116
123	Meat packing, wholesale (see also Shortenings (other than lard), vegetable cooking oils, and salad oil; Oleomargarine and other margarines; Sausage, etc., and sausage casings) This classification covers establishments engaged in both slaughtering cattle, hogs, sheep, or other animals and preserving all or a part of the raw stock by canning, salting, smoking, or otherwise curing it for the trade; establishments which purchase raw stock from slaughterhouses and preserve it; and establishments engaged in wholesale slaughtering only.	123
124	Oleomargarine and other margarines, not made in meat-packing establishments (see also Meat packing)	100

INDUSTRY GROUP 1.—FOOD AND KINDRED PRODUCTS—Contd.

OFFICE GROUP 1—Continued

Ind. no.	CLASSIFICATION	Form no.
125	<i>Peanuts, walnuts, and other nuts, processed or shelled. Abandoned as a manufacturing industry.</i>	
126	Poultry killing, dressing, and packing, wholesale This classification covers establishments with products valued at \$20,000 or more, engaged primarily in poultry killing, dressing, and packing (including canning), for the wholesale trade.	100
127	Rice cleaning and polishing	100
128	Sausage, meat puddings, headcheese, etc., and sausage casings, not made in meat-packing establishments (see also Meat packing)	100
120	Shortenings (other than lard), vegetable cooking oils, and salad oils (see also Meat packing) Shortenings compounded of both animal and vegetable oils and fats and those made of vegetable oils only; vegetable cooking oils and vegetable salad oils.	100
129	Sugar, beet	129
130	Sugar, cane, not including products of refineries This classification covers all establishments engaged primarily in the manufacture of sugar (raw or refined), molasses, and sirups, from cane.	130
131	Sugar refining, cane This classification embraces establishments engaged wholly or mainly in refining raw cane sugar, practically all of which is imported.	131
132	Vinegar and cider	105

U. S. DEPARTMENT OF COMMERCE
Sinclair Weeks, Secretary

BUREAU OF THE CENSUS
Robert W. Burgess, Director

Washington 25, D. C.

CENSUS

EXTRACTS FROM

FOREIGN COMMERCE AND NAVIGATION OF THE UNITED STATES

Calendar Year 1933



PREPARED UNDER THE SUPERVISION OF
J. EDWARD ELY
Chief, Foreign Trade Division
Bureau of the Census

No. 4.—GENERAL IMPORTS OF MERCHANDISE INTO THE UNITED STATES, BY ARTICLES AND COUNTRIES, DURING THE CALENDAR YEAR 1933

NOTE.—In this table the countries are grouped under geographical divisions as follows: Europe, North America, South America, Asia, Oceania, and Africa. The countries in each group are arranged in alphabetical order, but the group headings are omitted in order to save space. The complete country classification, showing countries and dependencies embraced under each title, is shown on the introductory pages VI and VII.

The articles are listed in the order of Schedule A, Statistical Classification of Imports, as follows:

- | | |
|---|---|
| Group 00. Animals and animal products, edible, classes 0011-0097. | Group 5. Nonmetallic minerals, classes 5000-5958. |
| Group 0. Animals and animal products, inedible, classes 0201-0090. | Group 6. Metals and manufactures, except machinery and vehicles, classes 6001-6900. |
| Group 1. Vegetable food products and beverages, classes 1031-1770. | Group 7. Machinery and vehicles, classes 7003-7930. |
| Group 2. Vegetable products, inedible, except fibers and wood, classes 2001-2960. | Group 8. Chemicals and related products, classes 8000-8731. |
| Group 3. Textile fibers and manufactures, classes 3001-3981. | Group 9. Miscellaneous, classes 9000-9990. |
| Group 4. Wood and paper, classes 4016-4790. | |

The class numbers in addition to the titles are printed at the head of each class in order to facilitate reference.

[Abbreviation: n. e. s., not elsewhere specified. The ton equals 2,240 pounds avoirdupois unless otherwise specified.]

GROUP 00. ANIMAL PRODUCTS, EDIBLE

COUNTRY	General imports of merchandise			Animals, edible										
	Total value of merchandise	Total free of duty	Total subject to duty	11. Cattle		12. Sheep, lambs and goats (dut.)		13. Hogs (dut.)		14. Live turkeys (dut.)		15. Other live poultry (dut.)		
				Free	Dutiable	Free	Dutiable	Free	Dutiable	Free	Dutiable	Dollars		
TOTAL	Dollars	Dollars	Dollars	Number	Dollars	Number	Dollars	Number	Dollars	Pounds	Dollars	Pounds	Dollars	Dollars
	1,449,558,740	878,100,199	571,458,541	1,613	41,702	74,658	652,941	1,114	6,906	6,470	500	977	161	7,690
Albania	28,564	160	28,404											
Austria	2,590,999	382,060	2,208,940											
Azores and Madeira Islands	788,940	883	788,057											
Belgium	23,163,235	6,185,857	16,977,378											
Bulgaria	315,343	265,639	29,704											
Czechoslovakia	14,650,527	1,349,064	13,301,463											
Denmark	1,785,549	339,184	1,446,365											
Estonia	549,027	386,760	162,267											
Finland	8,915,533	8,042,512	873,021											
France	49,701,854	14,489,721	35,212,133											96
Germany	78,184,540	21,933,299	56,251,241											512
Gibraltar	41,554	40,383	1,171											
Greece	5,967,413	1,107,291	4,860,122											
Hungary	1,185,455	53,699	1,131,756											
Iceland	489,979	301,336	188,643											
Irish Free State	507,568	193,492	314,076											
Italy	38,570,622	9,753,673	28,816,949											
Latvia	415,515	65,410	350,105											
Lithuania	372,691	213,582	159,109											
Malta, Goso, and Cyprus	93,024	68,931	24,093											
Netherlands	30,949,428	15,067,972	15,881,456											565
Norway	13,159,754	6,493,010	6,666,744											
Poland and Danzig	2,685,664	662,911	2,022,653											
Portugal	3,368,013	2,359,662	1,008,351											
Rumania	402,767	126,355	276,412											
Soviet Russia in Europe	11,347,568	5,186,837	6,160,731											
Spain	13,701,439	4,897,329	8,804,110											547
Sweden	30,972,309	26,343,734	4,628,575											
Switzerland	14,550,933	1,080,122	13,470,811											
United Kingdom	111,218,130	52,378,358	58,839,772											1,429
Yugoslavia	1,495,003	423,752	1,071,251											
Canada	185,408,850	129,926,931	55,481,919			1,370	29,211	1,112	6,900	6,470	500	977	161	3,830
British Honduras	430,410	389,945	40,465											
Costa Rica	3,943,793	3,942,032	1,761											
Guatemala	3,483,802	3,469,574	14,228											
Honduras	7,046,395	6,952,773	93,622											
Nicaragua	2,224,718	2,206,386	18,462											8
Panama	3,375,574	3,167,571	208,003											
Salvador	2,107,850	2,078,441	29,400											
Greenland	150,070	150,070												
Mexico	30,716,021	16,704,020	14,012,001			73,288	623,730							2
Miquelon and St. Pierre Islands	338,428	4,153	334,275											
Newfoundland and Labrador	4,753,523	3,938,486	815,037											
Bermudas	419,044	282,962	136,082											
Barbados	178,455	15,019	163,436											
Jamaica	1,246,434	675,192	571,242											
Trinidad and Tobago	1,536,275	1,245,238	291,037											
Other British West Indies	684,741	523,367	161,374											
Cuba	58,497,548	4,540,013	53,957,535											84
Dominican Republic	3,279,352	2,075,022	1,204,330											458
Netherland West Indies	6,533,336	440,591	6,092,745											
French West Indies	91,440	84,198	7,242											
Haiti, Republic of	803,681	716,100	87,581											
Virgin Islands of United States	516,846	515,723	1,123	1,613	41,702									
Argentina	33,841,203	7,177,883	26,663,320											
Bolivia	104,675	54,822	49,853											
Brazil	82,628,106	79,569,342	3,058,764											
Chile	11,503,492	7,356,458	4,147,034											
Colombia	47,636,697	42,212,543	5,424,054											14
Ecuador	1,887,906	900,748	987,157											
Falkland Islands	178,471	178,471												
British Guiana	275,697	28,419	247,278											
Surinam	1,229,679	606,282	623,397											
French Guiana	36,784	36,067	717											
Paraguay	261,931	51,825	210,106											
Peru	5,472,219	1,190,322	4,281,897											
Uruguay	3,772,861	602,449	3,170,412											
Venezuela	13,450,036	4,706,826	8,743,210											
Aden	1,041,679	1,040,254	1,425											

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No. 4.—GENERAL IMPORTS, 1933—GROUP 00—ANIMAL PRODUCTS, EDIBLE

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COUNTRY	Meats—Continued													
	24. Turkeys, dead (dut.)		25. Other poultry, dead (dut.)		26. Poultry, prepared (dut.)		28. Canned meats (dut.)		29. Beef and veal, pickled or cured (dut.)		30. Pork—hams, shoulders, and bacon (dut.)		31. Pork—pickled, salted, and other (dut.)	
	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars
TOTAL	307,147	40,106	155,248	50,004	297,555	147,926	43,024,989	2,812,806	657,818	39,368	1,608,677	398,177	688,110	216,215
Austria			20,214	5,306				7					18	6
Belgium							47	17						
Czechoslovakia											16,887	6,716	3,456	1,211
Denmark					201	50	22,845	5,034			5,052	1,088	23,541	2,887
Finland							540	89					425	74
France					56,823	70,188	12,933	3,287			1,909	699	1,603	555
Germany			850	292	394	371	33,210	9,868			204,168	69,870	209,611	76,867
Hungary					4,688	2,354	3,551	367					17,043	4,929
Irish Free State											59,793	12,421		
Italy					144	163	5,372	1,632			7,877	2,592	171,420	59,018
Lithuania							115	15						
Netherlands							6,586	1,077			23,270	6,938	22,407	6,941
Norway			416	95	66	28	10,544	1,192					2,995	986
Poland and Danzig							768	108			163,311	35,135	34,030	5,792
Soviet Russia in Europe			2,000	691										
Spain					461	211	1,455	376			2,131	1,408	24,051	11,736
Sweden					25	15	1,541	419					1,101	349
Switzerland									192	157			506	112
United Kingdom			30,061	9,005	9,421	5,855	20,483	6,620			31,848	6,429	1,984	827
Canada	4,716	988	7,126	1,346	99	33	8,018	2,949	7,382	1,156	1,170,295	253,034	115,606	35,578
Mexico			1,094	253										
Newfoundland and Labrador							208	27						
Cuba									275	20				
Argentina	302,366	39,112	612	145			19,659,546	1,296,344						
Brazil									114	13				
Chile	65	6	4,548	441					37,993	2,106				
Paraguay							1,326,273	125,997						
Uruguay			78,821	31,218			21,845,850	1,348,777	611,409	35,879				
China			8,516	1,152	59,597	21,372					287	50	785	183
Hong Kong					135,896	41,903					380	72	313	121
Japan					29,750	5,383	64,021	8,434			12,169	2,025	57,215	8,433
New Zealand							288	64						

COUNTRY	Meats—Continued						36. Animal oils and fats, edible				Dairy products			
	32. Other prepared meats (dut.)		34. Sausage casings—sheep, lamb, and goat (free)		35. Other sausage casings (free)		Free		Dutiable		37. Cream (dut.)		38. Milk (dut.)	
	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Gallons	Dollars	Gallons	Dollars
TOTAL	4,805	667	6,199,544	4,788,262	7,930,943	816,807	187,074	8,985	99,928	3,980	26,976	32,467	47,258	7,687
Austria			6,490	2,938										
Czechoslovakia			4,132	4,760										
Denmark	2,500	274	8,326	9,064	228,280	27,312					18	37		
France			5,753	6,364	58,034	4,011								
Germany	174	27	54,837	54,294	523,329	58,766			3,163	607				
Iceland			2,330	2,926									10	8
Italy			180	204					455	67				
Latvia					23,465	1,417								
Lithuania			800	901										
Netherlands			17,879	21,688	45,210	12,733								
Norway			10	6					48	7	1,049	1,859		
Poland and Danzig			2,233	1,130										
Rumania			666	118										
Soviet Russia in Europe			490,100	939,964	4,630	15,968								
Spain			661	923										
Sweden					5,143	386								
Switzerland			1,495	2,234							93	226		
United Kingdom			147,065	119,754	1,379	976			191	11	19	31		
Yugoslavia			4,060	5,764										
Canada	1,224	190	401,806	249,652	1,523,264	134,437			2,136	207	24,797	30,314	47,248	7,679
Panama					27,027	2,163								
Mexico	850	164			251	30								
Cuba					2,400	90								
Argentina	57	12	678,649	338,600	3,350,785	287,749								
Brazil			12,328	11,066	556,067	32,442								
Chile			261,000	38,990	135,714	13,602								
Peru			701	591	51,957	3,854								
Uruguay			43,622	33,334	974,281	72,818								
British India			33,924	50,836										
China			291,331	366,890	243,461	122,641								
Hong Kong					20	11								
Iraq			143,158	192,835	1,865	2,272								
Japan			15,700	11,899										
Persia			172,126	187,182										
Philippine Islands							187,074	8,985						
Siam			1,138	918										
Syria			65,467	112,873										
Turkey in Asia and Europe			371,674	615,874										
Other Asia			871	500										
Australia			1,234,531	597,493	129,825	19,006			46,281	1,422				
New Zealand			1,588,588	697,710	39,647	4,173			47,454	1,752				
Union of South Africa			28,110	11,913	4,429	702								
Egypt			310	224										
Algeria and Tunisia			5,496	8,191	80	8								
Morocco			102,087	90,619										

202 No. 4.—GENERAL IMPORTS, 1933—GROUP 00—ANIMAL PRODUCTS, EDIBLE

COUNTRY	Dairy products—Continued										Total fish and fish products 50-56		50-56. Fish—product of the Philippine Islands (free)	
	40. Condensed and evaporated milk (dut.)		41. Dried and malted milk (dut.)		44. Butter (dut.)		45. Cheese—Emmentaler or Swiss (dut.)		46. Other cheese (dut.)					
	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars
TOTAL	1,117,957	50,526	561,224	99,132	1,021,806	160,626	10,724,473	2,499,419	37,672,267	8,115,848	288,409,653	22,148,632	269,633	8,418
Albania									210,813	25,895				
Austria							229,253	46,255	9,392	1,664				
Azores and Madeira Islands											9,180	382		
Belgium	66	16							1,616	229	6,106	334		
Bulgaria					2,690	664			81,809	11,418	55	7		
Czechoslovakia									50,496	7,969				
Denmark	323	21			90,967	29,615	587,101	91,361	837,697	130,750	91,351	2,383		
Estonia											12,219	1,140		
Finland							1,075,377	162,611	186,846	33,880	123,784	3,633		
France							1,280	532	3,173,257	1,005,669	255,406	75,090		
Germany			529	280			455,236	98,266	303,975	81,608	698,883	51,457		
Greece					1,573	512			1,936,878	260,008	52,280	8,413		
Iceland											1,111,512	27,653		
Irish Free State	210	12									388,926	12,909		
Italy					5,190	914	3,471	687	24,669,315	5,603,704	1,926,809	456,185		
Latvia									35	5	1,062,632	95,171		
Malta, Goso, and Cyprus									10,198	828				
Netherlands	1,115,723	50,410	121,646	5,533					2,012,511	249,950	9,440,243	394,645		
Norway					55	12			547,096	77,722	40,308,244	2,763,225		
Poland and Danzig									11,943	1,834	32,239	3,459		
Portugal									1,469	296	5,727,141	677,126		
Rumania									10,264	948	3,171	284		
Soviet Russia in Europe					206,287	19,454					2,485,753	465,545		
Spain									60	21	3,419,544	392,666		
Sweden					1,200	110			78,554	9,808	2,268,402	109,846		
Switzerland			2,204	809	863	311	8,372,755	2,099,737	1,419,535	340,587				
United Kingdom			3,817	1,604	120,228	15,126			114,228	34,197	10,260,633	742,011		
Yugoslavia									63,870	8,762	410	51		
Canada	1,281	41	433,028	90,908	34,463	7,762			1,028,483	122,918	137,316,647	8,637,784		
British Honduras											375	120		
Costa Rica											56,595	4,804		
Nicaragua									185	9	355,800	16,799		
Panama											17,000	1,005		
Mexico									6,397	1,209	5,771,210	402,975		
Miquelon and St. Pierre Islands											494,800	10,400		
Newfoundland and Labrador									4,464	476	15,792,977	651,035		
Jamaica											62,670	3,080		
Trinidad and Tobago											100	5		
Other British West Indies											97,382	3,445		
Cuba	165	8							1,350	150	37,686	3,863		
Dominican Republic									2,365	308				
Virgin Islands of United States											13,997	863		
Argentina									840,366	127,975				
Chile									1,149	166				
Venezuela											1,764	242		
British India					213	23					102	47		
China											118,646	18,493		
Netherland East Indies											300	68		
Hong Kong											819,625	155,243		
Japan	189	15									41,675,263	5,190,343		
Palestine									120	12				
Philippine Islands											271,355	8,608	269,633	8,418
Soviet Russia in Asia											2,708,828	758,927		
Syria					11,075	2,533			1,940	254				
Turkey in Asia and Europe									27,755	2,086	84,193	7,575		
Australia					7,004	973			730	559				
New Zealand					540,898	82,308			72	19	1,917	673		
Union of South Africa											1,071	317		
Egypt									734	112				
Algeria and Tunisia											4,409	338		

COUNTRY	Fish, fresh or frozen													
	50. Salmon (dut.)		51. Fresh-water fish and eels (dut.)		52. Cod, haddock, hake, pollock, and cusk (dut.)		53. Halibut (dut.)		54. Mackerel (dut.)		55. Swordfish and sturgeon (dut.)		56. Other fresh fish (dut.)	
	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars	Pounds	Dollars
TOTAL	4,128,394	257,429	40,862,140	2,860,375	898,186	26,769	4,088,373	320,301	507,816	22,719	4,377,222	451,319	2,149,563	102,728
Germany													249	96
Portugal													1,190	172
Soviet Russia in Europe	138,501	22,189									1,678,287	203,767	39,691	1,563
Spain													1,702	463
United Kingdom	6,700	1,848											38,215	11,947
Canada	4,973,570	262,084	40,808,095	2,858,484	898,186	26,769	2,928,719	307,131	504,396	22,525	1,821,521	191,181	142,638	6,893
Mexico			49,995	1,489									1,822,163	73,583
Newfoundland and Labrador	313	29					11,063	1,098					2,000	60
Other British West Indies													3,120	372
Cuba													685	108
China													4,300	318
Hong Kong			900	171									53,590	7,178
Japan	4,310	369	2,150	231			146,600	12,012	2,520	194	579,416	55,371		

SUMMARY TABLES OF FOREIGN COMMERCE

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No. XIV.—VALUES OF EXPORTS OF DOMESTIC MERCHANDISE, BY ARTICLES, GROUPED ACCORDING TO DEGREE OF MANUFACTURE AND USES (ECONOMIC CLASSES), CALENDAR YEARS 1932 AND 1933—Continued

[Abbreviation n.e.s.—not elsewhere specified. Values in thousands of dollars; that is, 000 omitted]

CLASSIFICATION OF ARTICLES	1932	1933	CLASSIFICATION OF ARTICLES	1932	1933	CLASSIFICATION OF ARTICLES	1932	1933
Class E.—FINISHED MANUFACTURES—Continued			Class E.—FINISHED MANUFACTURES—Continued			Class E.—FINISHED MANUFACTURES—Continued		
Brooms.....	30	28	Iron and steel manufactures—Continued			Fuses and blasting caps.....	378	405
Cotton manufactures:			Hollow ware.....	909	865	Soap.....	2,847	2,122
Cloth.....	27,357	23,511	Enameled ware of iron or steel.....	343	364	Dentifrices.....	1,308	1,109
Wearing apparel.....	3,099	2,434	Metal furniture and fixtures.....	1,354	1,161	Talcum and other toilet powders.....	647	618
Other manufactures of cotton.....	5,806	5,700	Stoves and furnaces, except electric and parts.....	1,011	670	Creams, rouges, and other cosmetics.....	792	768
Jute manufactures.....	1,364	1,081	House-heating boilers and radiators.....	247	181	Perfumery and toilet waters.....	99	120
Flax, hemp, and ramie manufactures.....	102	105	Oil burners and parts.....	1,090	1,140	Other toilet preparations.....	729	699
Cordage, except of cotton or jute.....	855	513	Tools.....	3,968	5,134	Photographic and projection goods.....	12,526	12,536
Other manufactures of vegetable fiber, straw, or grass, n.e.s.....	111	74	Hardware.....	1,939	1,900	Optical goods.....	1,095	829
Wool manufactures.....	833	1,081	Needles, hand and machine.....	429	310	Dental instruments.....	879	1,090
Hair manufactures.....	97	122	Chains.....	600	697	Teeth.....	1,081	614
Silk manufactures.....	3,867	4,000	Scales and balances.....	394	471	Dental office equipment.....	135	119
Rayon manufactures.....	2,062	1,920	Wood screws.....	158	73	Sterilizers.....	137	84
Linoleum.....	52	55	Metal drums and containers for oil, gas, and other liquids.....	2,551	2,399	Surgical and medical instruments.....	191	137
Felt-base floor coverings.....	191	219	Other manufactures.....	2,674	2,654	Surgical appliances, artificial limbs, trusses, etc.....	410	281
Oilcloth.....	684	623	Aluminum manufactures:			Surveying and engineers' instruments.....	41	71
Window-shade and hook cloth.....	185	235	Tubes, moldings, castings, and other shapes.....	337	160	Other scientific, laboratory, and professional instruments and apparatus.....	1,533	1,315
Waterproof auto cloth.....	53		Table, kitchen, or hospital utensils.....	202	197	Musical instruments.....	1,393	975
Pyroxylin and other oil-coated fabrics.....	533	711	Other aluminum manufactures.....	445	371	Pencils.....	571	450
Waterproof outer garments.....	123	94	Copper manufactures:			Pens and penholders.....	661	349
Corsets, brassieres, and girdles.....	655	566	Pipes and tubes.....	213	134	Writing ink.....	112	109
Pajamas, night shirts, and gowns.....	73	68	Wire.....	197	247	Printing and lithographic ink.....	694	708
Hat braid of straw or other fiber.....	53	22	Insulated wire and cable.....	1,038	1,098	Other ink.....	112	108
Hats of straw, palm leaf, etc.....	181	116	Other copper manufactures.....	237	278	Paste and mucilage.....	71	72
Hats and caps, except straw or other fiber.....	614	512	Brass and bronze manufactures:			Carbon paper.....	390	349
Hat trimmings, artificial flowers, etc.....	87	53	Pipes and tubes.....	228	152	Typewriter ribbons.....	332	363
Mattresses.....	52	50	Pipe fittings and valves.....	486	479	Other office supplies.....	585	560
Absorbent cotton, gauze, and sterilized bandages.....	1,273	992	Plumbers' brass goods.....	183	214	Toys.....	775	555
Elastic webbing.....	379	353	Wire of brass or bronze.....	51	50	Athletic and sporting goods.....	964	799
Garters and arm bands.....	74	50	Hardware of brass or bronze.....	197	188	Firearms and ordnance.....	598	1,331
Suspenders and braces.....	14	15	Other brass and bronze manufactures.....	923	743	Ammunition.....	1,100	1,321
Other textile manufactures, n.e.s.....	1,153	1,396	Lead manufactures.....	151	234	Books, maps, pictures, and other printed matter.....	12,440	11,390
Wood manufactures, n.e.s.....	5,631	6,517	Nickel manufactures.....	432	505	Clocks.....	294	291
Cork manufactures.....	410	445	Tin manufactures.....	162	819	Watches.....	164	128
Paper manufactures.....	14,662	13,672	Zinc manufactures, n.e.s.....	130	118	Time-recording devices and parts.....	337	193
Petroleum oils, refined:			Plated ware, other than gold or silver, except cutlery.....	170	170	Art works, paintings, and statuary.....	984	853
Gasoline, naphtha, and other light products.....	79,081	57,520	Type.....	67	50	Barber and beauty-parlor chairs.....	34	
Illuminating oil (kerosene).....	23,732	19,209	Other manufactures of metals and metal composition, n.e.s.....	687	690	Bottle and container closures.....	589	572
Lubricating oil.....	48,467	55,575	Platinum manufactures, except jewelry.....	107	57	Composition roofing.....	340	539
Insulating or transformer oils.....	411	327	Jewelry.....	372	362	Billiard tables and accessories.....	79	57
Lubricating greases.....	2,788	2,954	Tableware, including cutlery.....	109	148	Buttons.....	181	175
Stone manufactures.....	269	262	Gold manufactures, n.e.s. (plated and solid).....	641	142	Lamps and illuminating devices, except electric.....	516	698
Glass and glass products.....	4,067	4,306	Silver manufactures, n.e.s. (plated and sterling).....	95	54	Matches.....	51	25
China and porcelain ware.....	448	443	Machinery and vehicles.....	221,745	236,739	Fire-fighting equipment.....	302	303
Water-closet sets.....	150	223	Medicinal and pharmaceutical preparations.....	10,027	9,816	Fly paper, traps, and swatters.....	21	22
Earthen and stone ware.....	262	289	Petroleum jelly.....	611	609	Synthetic resin sheets, plates, and manufactures.....	120	214
Bricks and tiles.....	1,148	1,408	Tobacco extracts.....	310	195	Pyroxylin products, known as celluloid, pyralin, viscoloid, fiberloid, etc., manufactures of.....	199	149
High-temperature cements.....	127	132	Disinfectants, insecticides, fungicides, and similar preparations and materials, n.e.s.....	1,572	1,906	Brushes.....	512	473
Other terra-cotta and ceramic manufactures.....	64	73	Cementing preparations for repairing, sealing, and adhesive use.....	371	430	Plates and cuts, electrotypes, stereotypes, half-tones, lithographic, or engraved.....	236	282
Abrasives, n.e.s.....	2,298	2,595	Water softeners, purifiers, boiler and feed-water compounds.....	217	255	Umbrellas and parasols.....	23	18
Asbestos manufactures.....	1,458	1,501	Blackings and polishes.....	1,015	1,034	Candles.....	79	50
Asphalt and bitumen, manufactures, except roofing.....	318	233	Other chemical specialty compounds.....	3,670	3,786	Notions and cheap novelties.....	747	679
Carbon and graphite.....	1,852	2,081	Hydrogen peroxide (or dioxide).....	85	91	Refrigerators, except electric.....	63	98
Chalk manufactures.....	74	79	Paints, stains, and enamels.....	3,755	4,123	Soda-fountain equipment.....	119	94
Plaster, calcined, and manufactures of.....	72	72	Varnishes.....	359	391	Shoe findings.....	606	440
Mica and manufactures.....	133	118	Paint and varnish removers.....	15		Trunks.....	57	49
Sulphur, refined, sublimed, and flowers of.....	396	317	Other potash fertilizers.....	16		Coin-operated scales.....	11	
Magnesia and manufactures.....	91	92	Concentrated chemical fertilizers.....	489	523	Coin-operated commodity-vending machines.....	122	230
Salt.....	478	627	Prepared fertilizer mixtures.....	85	80	Other coin-operated machines (except musical).....	441	480
Iron and steel manufactures:			Explosives.....	905	1,083	Household and personal effects.....	10,988	7,725
Structural iron and steel.....	2,069	2,182				All other articles, n.e.s.....	2,417	1,995
Railway track materials.....	727	2,165						
Tubular products and fittings.....	6,025	8,006						
Wire and manufactures.....	2,656	4,188						
Nails and bolts (except railroad).....	1,451	1,794						
Castings and forgings.....	1,409	1,317						
Cutlery.....	2,130	1,979						

SUMMARY TABLES OF FOREIGN COMMERCE

No. XV.—VALUES OF GENERAL IMPORTS OF MERCHANDISE, BY ARTICLES, GROUPED ACCORDING TO DEGREE OF MANUFACTURE AND USES (ECONOMIC CLASSES), CALENDAR YEARS 1932 AND 1933

[Abbreviation n.e.s. = not elsewhere specified. Values in thousands of dollars; that is, 000 omitted]

CLASSIFICATION OF ARTICLES	1932	1933	CLASSIFICATION OF ARTICLES	1932	1933	CLASSIFICATION OF ARTICLES	1932	1933
TOTAL VALUE OF IMPORTED MERCHANDISE	1,399,774	1,449,559	Class A. CRUDE MATERIALS—			Class D.—SEMIMANUFACTURES—Continued.		
Class A. CRUDE MATERIALS	358,395	418,151	Continued.			Free of duty—Continued.		
Free of duty	296,731	298,950	Wood, unmanufactured	250	531	Shellac	1,511	972
Hides and skins	16,598	28,443	Coal	2,186	3,344	Vegetable oils, expressed, inedible, n.e.s.	20,347	25,004
Furs, undressed	25,137	33,332	Crude petroleum	8,653	17,718	Gambier	146	197
Live animals, n.e.s.	1,047	803	Clays and earths	1,058	1,350	Mangrove extract	125	214
Bones, hoofs, and horns	713	791	Mica, crude	79	177	Cotton waste	177	814
Glue stock, hide cuttings, etc.	572	502	Magnesite	31		Silk waste	444	1,068
Ivory, tusks, in natural state	33	23	Graphite	151	211	Wood, unmanufactured	1,407	1,815
Shells, unmanufactured	940	1,187	Manganese ore	1,108	947	Sawmill products, except laths and shingles	2,416	641
Tankage	311	542	Tungsten ore and concentrates	16	162	Cork waste	1,172	1,157
Other inedible animal products	983	1,150	Bauxite	1,043	900	Paper base stock (pulp)	46,921	57,399
Rubber and similar gums	33,330	49,189	Copper ore and concentrates	570	2,104	Coke, charcoal, briquets, etc.	483	12
Varnish gums, except shellac	1,818	2,290	Lead ore and bullion	1,522	396	Petroleum products, n.e.s.	7,832	
Chicle, crude	2,023	1,081	Zinc ore	72	78	Paraffin and paraffin wax	659	
Tragacanth and other gums and resins, n.e.s.	878	977	Class B. CRUDE FOODSTUFFS.	339,964	311,813	Abrasive, crude, artificial	510	1,639
Crude drugs, herbs, leaves, roots, etc., n.e.s.	4,525	4,495	Free of duty	207,438	190,199	Asbestos	2,063	3,130
Oilseeds, n.e.s.	9,227	10,647	Fish	3,777	3,478	Copper and brass	17,179	
Vegetable tallow and wax	950	1,169	Wheat	3,916	4,209	Nickel oxide	120	421
Crude dyeing and tanning materials	1,017	1,085	Vegetables, n.e.s.	54	35	Tin bars, blocks, etc.	16,474	51,188
Seeds, except oilseeds	1,300	15	Fruits, n.e.s.	25,104	20,548	Cobalt metal	148	406
Plants		21	Chestnuts	551	492	Platinum and platinum metals	690	2,120
Tobacco, unmanufactured	507	223	Peanuts	1		Coal-tar products, crude	3,234	2,103
Vegetable ivory (tugu nuts)	148	202	Cocoa or cacao beans	19,676	18,735	Acids, n.e.s.	372	543
Moss, seaweeds, etc., crude	96	93	Coffee	130,812	124,137	Copper sulphate	89	
Other inedible vegetable products	91	118	Tea	12,455	13,708	Iodine, crude	2,226	2,936
Cotton, unmanufactured	1,935	2,071	Spices, n.e.s.	5,090	4,857	Potassium compounds	1,015	753
Jute and jute butts	1,867	2,586	Dutiable	95,596	81,614	Sodium, cyanide and other	1,730	2,066
Jute waste (bagging and sugar-sack cloth)	735	1,090	Edible animals	1,483	668	Radium salts	479	576
Other vegetable fibers, unmanufactured	12,052	11,343	Cream and milk	205	40	Other chemicals, n.e.s.	980	872
Carpet wool, n.e.s.	621	2,009	Fish	3,583	4,172	Fertilizers, n.e.s.	13,464	17,306
Horsehair and other animal hair	708	1,253	Eggs, in the shell	35	34	Perfume materials	314	379
Silk, unmanufactured	113,882	102,536	Grains	1,664	1,734	Dutiable	69,004	114,016
Logs and timber	919	1,199	Hay	98	53	Leather	5,847	9,786
Cabinet wood, in the log	701	528	Beans and peas, green	1,089	632	Fur skins, dressed	2,636	3,980
Rattan, unmanufactured	201	282	Beans and peas, dried	504	893	Whale and fish oils	173	206
Cork, wood or bark	684	1,698	Chickens	492	439	Stearic acid	306	323
Pulpwoods	5,582	5,302	Vegetables, n.e.s.	6,264	4,184	Bristles, sorted or bunched	2,313	4,027
Paper stock, rags, and waste	1,897	2,598	Fruits	3,506	2,645	Gelatin, inedible and manufactures	353	258
Coal	2,234	89	Nuts, n.e.s.	4,170	3,945	Glue and glue size	486	652
Petroleum, crude	21,771		Spices, n.e.s.	1,825	1,822	Casein or lactarene	38	445
Stone, n.e.s.	82	83	Sugarcane, natural	610	353	Tar, pitch, and turpentine	103	163
Gypsum, crude	347	374	Class C.—MANUFACTURED FOODSTUFFS.	173,927	205,370	Gums and resins, n.e.s.	520	438
Chalk	61	95	Free of duty	66,840	78,499	Vegetable oils, expressed, inedible, n.e.s.	279	669
Asphalt and bitumen	251	278	Sausage casings	4,122	5,606	Extracts for dyeing and tanning	1,977	2,865
Corundum, emery and flint	41	85	Lobsters, canned	568	485	Cotton-yarns	756	1,186
Asbestos, unmanufactured	187	414	Grains, preparations of	283	250	Yarns of flax, hemp, and ramie	288	553
Cryolite or kryolith	291	298	Oil cake and oil-cake meal	61	128	Wool, semimanufactures	1,160	2,840
Pyrites	691	1,132	Farinaceous substances	2,032	3,104	Spun silk	37	94
Mineral wax	274	455	Pineapples, prepared	299	138	Rayon waste, yarns, and thread	1,060	2,473
Other nonmetallic minerals	236	212	Cocoanut meat, prepared	1,595	1,655	Hat materials	1,407	1,388
Precious stones	2,628	2,188	Sugar	57,340	66,803	Boards, planks, etc., n.e.s.; and clapboards	4,483	7,804
Iron ore	1,539	2,054	Molasses	250	82	Veneers and plywoods	57	90
Ores of ferro-alloying metals	2,020	2,084	Articles in Class C, ordinarily dutiable, imported under special provision, free	88	242	Chair cane and osier	72	113
Copper ore, concentrates and regulus	2,791	878	Dutiable	107,987	196,878	Coke and briquets	234	610
Nickel ore and matte	775	2,475	Meats	3,514	3,838	Petroleum products	2,991	7,953
Ores of tin and zinc	4	11	Animal oils and fats, edible	33	4	Marble and other building stone	709	538
Antimony ore	74	107	Milk, condensed, dried, etc.	180	150	Lime and cement	474	512
Ores, metals, and alloys, n.e.s.	101	239	Butter and cheese	12,707	10,776	Gypsum	47	47
Gold and silver sweepings	440	(1)	Fish	13,469	14,005	Mica, split	168	202
Platinum	727	1,820	Eggs, preserved, and egg albumen	778	503	Talc, steatite, etc.	357	384
Sodium sulphate	644	885	Meat extract	177	192	Magnesite, dead burned, and grain	104	267
Fertilizers, n.e.s.	4,381	5,985	Gelatin, edible	324	412	Precious stones	10,289	10,764
Dutiable	71,564	119,901	Grains, preparations of	1,795	7,368	Iron and steel semimanufactures	4,026	2,927
Hides and skins	5,896	17,236	Fodders and feeds	2,113	4,006	Ferro-alloying metals	1,390	3,686
Wool-grease	113	138	Vegetables, preparations of	6,220	6,161	Aluminum	1,290	3,156
Tallow	11	8	Fruits	5,427	5,528	Copper	1,178	14,490
Grease and oils, inedible, n.e.s.	49	54	Nuts, shelled	3,601	2,436	Lead, pigs, etc., and type metal	146	45
Live animals, n.e.s.	718	666	Vegetable oils and fats, edible	7,087	7,806	Nickel	3,733	7,846
Feathers, crude	551	630	Cocoa and chocolate	417	373	Zinc blocks, pigs, etc.	20	136
Balsams, crude	68	91	Spices, n.e.s.	912	1,304	Antimony	122	174
Gum arabic or senegal	227	264	Sugar	39,379	40,838	Quicksilver or mercury	231	778
Crude drugs, herbs, leaves, roots, etc., n.e.s.	390	430	Molasses	6,171	5,184	Other metals, alloys, etc.	15	71
Oilseeds, n.e.s.	7,245	16,021	Candy and confectionery	660	637	Coal-tar products, n.e.s.	5,474	7,621
Seeds, except oilseeds	1,914	2,116	Maple sugar and maple sirup	605	406	Acids, n.e.s.	1,343	2,574
Nursery and greenhouse stock	2,432	2,021	Dextrose, lactose, levulose, and honey	10	8	Alcohols, including fusel oil	11	11
Tobacco, unmanufactured	22,519	21,284	Beverages	1,104	14,944	Ammonium compounds, n.e.s.	209	356
Agar-agar	184	161	Class D.—SEMIMANUFACTURES	316,987	293,006	Barium compounds	39	61
Hops, hop extract, and lupulin	205	3,028	Free of duty	147,963	177,969	Calcium compounds	11	16
Peat moss	991	443	Cod and cod-liver oil	1,724	2,161	Cellulose products, n.e.s.	167	137
Other vegetable products, n.e.s.	110	92	Beeswax and other animal wax	468	566	Cobalt oxide	220	414
Cotton, unmanufactured	4,753	5,833	Rubber, reclaimed and scrap	55	64	Copper sulphate		2
Flax and hemp, unmanufactured	834	1,426				Glycerin, n.e.s.	195	233
Tim vegetable	124	162				Lime, chlorinated	62	61
Wool, unmanufactured, n.e.s.	5,408	19,358				Magnesium compounds	146	161
Human hair	306	296				Potassium compounds, n.e.s.	1,275	1,852
Brier, ivy, or laurel root	201	245				Sodium compounds, n.e.s.	629	632

(1) Included with gold and silver ore and base bullion, Table 1, page 1.

EXHIBIT "10"

**LEGISLATIVE AUTHORITY
FOR STATISTICAL IMPORT SCHEDULE A**

The tariff act approved June 17, 1930, provides in title IV, section 484 (e), "the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the United States Tariff Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States, and as a part of the entry there shall be attached thereto or included therein an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and the value of the total quantity of each kind of article."

CLASSIFICATION OF IMPORTS

VII

IMPORT COMMODITY GROUP AND SUBGROUP CODE DESIGNATIONS

Description	Schedule A Commodity Code No.	Sub- group Code No.	Description	Schedule A Commodity Code No.	Sub- group Code No.
Group 00.—Animals and Animal Products, Edible.			Group 3.—Textile Fibers and Manufactures—Continued		
Animals, edible, except for breeding	0010600-0015500	1	Silk and manufactures	3702000-3799900	44
Meat products	0018000-0035500	2	Synthetic fibers and manufactures	3800000-3880490	45
Animal oils and fats, edible	0036000-0036900	3	Miscellaneous textile products	3900100-3981100	46
Dairy products	0037000-0046990	4	Group 4.—Wood and Paper		
Fish and fish products, except shellfish	0047000-0079590	5	Wood, unmanufactured	4007100-4080500	47
Shellfish and products	0080100-0087900	6	Sawmill-products (lumber)	4103100-4207555	48
Other edible animal products	0088100-0097900	7	Wood manufactures	4208000-4280990	49
Group 0.—Animals and Animal Products, Inedible			Cork and manufactures	4300000-4321900	50
Hides and skins, raw, except furs	0201000-0299900	8	Paper base stocks	4590000-4692900	51
Leather	0300100-0345900	9	Paper and manufactures	4711000-4799990	52
Leather, rawhide, and parchment manufactures	0350000-0699990	10	Group 5.—Nonmetallic Minerals		
Furs and manufactures	0700000-0759900	11	Coal and related fuels	5000000-5014300	53
Animal and fish oils, and greases, inedible	0803000-0821600	12	Petroleum and products	5052000-5079100	54
Other inedible animals and animal products	0840000-0990290	13	Stone, lime, cement, gypsum and gypsum products	5080110-5193900	55
Group 1.—Vegetable Food Products and Beverages			Glass and products	5200400-5290850	56
Grains and preparations	1020000-1090260	14	Clay and products	5300000-5390700	57
Fodders and feeds, n. e. s.	1101000-1190800	15	Other nonmetallic minerals and manufactures, except precious stones and imitations	5391000-5930980	58
Vegetables and preparations	1191100-1250990	16	Precious and semiprecious stones, imitations, and industrial diamonds	5950000-5958100	59
Fruits and preparations	1290000-1330990	17	Group 6.—Metal and Manufactures Except Machinery and Vehicles		
Nuts and preparations	1350000-1380140	18	Iron ore and concentrates	6001000-6001100	60
Vegetable oils and fats, edible	1420000-1428900	19	Steel mill products	6002000-6116104	61
Cocoa, coffee, and tea	1501300-1521000	20	Iron and steel manufactures	6117000-6200994	62
Spices	1523100-1550590	21	Ferro-alloys, ores and metals, n. e. s.	6211000-6270900	63
Sugar and related products	1570000-1654800	22	Aluminum and manufactures	6301000-6305900	64
Beverages	1711300-1900000	23	Copper and manufactures	6400400-6430300	65
Group 2.—Vegetable Products, Inedible, Except Fibers and Wood			Brass and bronze manufactures	6453000-6459900	66
Rubber and allied gums and manufactures	2011000-2098900	24	Lead and manufactures	6502300-6509900	67
Naval stores, gums, and resins	2102000-2189400	25	Nickel and manufactures	6540000-6544900	68
Drugs, herbs, leaves, roots, etc.	2201000-2220490	26	Tin	6550000-6551900	69
Oil seeds	2231000-2240700	27	Zinc and manufactures	6557000-6559900	70
Vegetable oils and waxes, inedible	2241000-2290580	28	Other nonferrous ores, metals, and alloys, except precious	6650000-6790990	71
Dyeing and tanning materials	2302000-2345950	29	Precious metals, jewelry, and plated ware	6820000-6900550	72
Seeds, except oil seeds	2401000-2460990	30	Group 7.—Machinery and Vehicles		
Nursery and greenhouse stock	2501000-2599100	31	Electrical machinery and apparatus	7063000-7100900	73
Tobacco and manufactures	2601000-2629900	32	Engines, turbines, and parts, n. e. s.	7110000-7110700	74
Miscellaneous vegetable products	2800000-2960150	33	Other machinery, except agricultural	7400200-7800990	75
Group 3.—Textile Fibers and Manufactures			Agricultural machinery and implements	7850000-7890190	76
Cotton, unmanufactured	3001000-3005000	34	Vehicles and parts	7900100-7940290	77
Cotton semimanufactures	3006100-3020999	35	Group 8.—Chemicals and Related Products		
Cotton manufactures	3030000-3230800	36	Coal-tar products	8000000-8090900	78
Jute and manufactures	3241000-3250900	37	Medicinal and pharmaceutical preparations	8102000-8150600	79
Flax, hemp, and ramie, and manufactures	3261000-3390490	38	Industrial chemicals	8170000-8380992	80
Other vegetable fibers and manufactures	3401000-3421990	39	Pigments, paints, and varnishes	8400100-8441300	81
Wool, unmanufactured	3501000-3541000	40	Fertilizers and fertilizer materials	8500000-8559900	82
Wool semimanufactures	3550000-3574600	41			
Wool manufactures	3607000-3680800	42			
Hair and manufactures, n. e. s.	3690000-3698900	43			

CLASSIFICATION OF IMPORTS

IMPORT COMMODITY GROUP AND SUBGROUP CODE DESIGNATIONS—Continued

Description	Schedule A Commodity Code No.	Sub- group Code No.	Description	Schedule A Commodity Code No.	Sub- group Code No.
Group 8.—Chemicals and Related Products—Continued			Group 9.—Miscellaneous— Continued		
Explosives, fireworks, and ammu- nition.....	8620000-8625000	83	Musical instruments, parts, and accessories.....	9200000-9207000	87
Soap and toilet preparations.....	8711000-8731200	84	Toys, athletic and sporting goods..	9400000-9439999	88
Group 9.—Miscellaneous			Firearms and parts.....	9470000-9477000	89
Photographic goods.....	9001000-9040400	85	Books, maps, pictures, and other printed matter, n. e. s.....	9500000-9530790	90
Scientific and professional instru- ments, apparatus, and supplies, n. e. s.....	9140200-9180290	86	Clocks, watches, clockwork mech- anisms, and parts.....	9540100-9590031	91
			Art works and antiques.....	9610000-9670300	92
			Miscellaneous articles, n. e. s.....	9700000-9990750	93

CODE CLASSIFICATION OF ECONOMIC CLASSES

Crude materials: 0. Agricultural 1. Nonagricultural	Crude foodstuffs: 2. Agricultural 3. Nonagricultural	Manufactured foodstuffs and beverages: 4. Agricultural 5. Nonagricultural	Semimanufactures: 6. Agricultural 7. Nonagricultural	Finished Manufactures: 8. Agricultural 9. Nonagricultural
---	--	--	--	---

Schedule A.—COMMODITY NUMBERS IN EACH ECONOMIC CLASS

(0) Agricultural Crude Materials	(1) Nonagricultural Crude Materials—Con.	(4) Agricultural Manufactured Foodstuffs and Beverages—Continued	(7) Nonagricultural Semimanufactures— Continued	(8) Agricultural Finished Manufactures—Con.
0201000-0293200	5500010-5500500	0090000-0097900	3244000-3244300	2934000
0299500-0299900	5550000-5560990	1053000-1059200	3270100-3270900	2946000-2946100
0813200-0815600	5711000	1072000-1090260	3550000-3574600	
0821100-0860100	5730100-5950000	1111000-1190800	3704000-3706500	(9) Nonagricultural Finished Manufactures
0863100-0863500	5752100-5952700	1227000-1250370	3800000-3815000	0350000-0699998
0890000-0890800	5954000-5954590	1250540	3900100-3902900	0753000-0759900
0905000-0905400	6001000-6001100	1250710-1250990	3906700-3906900	0915000
0911130-0911300	6211000-6211300	1306000-1307700	4036000-4037500	0929000-0929900
0922100-0922300	6213100-6213500	1309000-1309100	4065300-4065800	0933000
0930300-0930900	6232000	1314100-1317100	4067000-4067100	0941700-0941900
0975000	6280000-6301000	1319100-1324200	4103100-4204900	0970000-0972100
0979000-0979500	6400400-6400500	1327000-1330230	4209100-4209800	0990100-0990290
2011000-2017000	6402300	1330320-1330340	4212000	2022000-2098900
2201000-2203000	6404100-6405100	1330380-1330400	4222000-4223000	2621000-2629900
2206000-2220050	6502300-6504000	1330530-1330990	4301000	2935000
2231000-2240700	6540000	1379000-1428900	4600000-4650900	2950000-2960150
2250000-2252500	6550000	1502100-1503500	5008000-5011000	3030000-3230800
2401000-2610000	6557000-6557300	1523100	5057000-5068300	3245200-3250900
2810100-2810290	6650000	1538000	5076000	3272400-3390490
2911000	6660000	1550030-1550590	5078100-5080500	3410010-3421990
2932000-2932800	6740030-6740190	1580750-1640000	5078100-5080500	3607000-3680800
2936000-2945200	6820000-6821500	1651000-1654800	5109300-5110300	3692000-3693900
3001000-3005000	8335000	1731100-1732920	5171000-5182500	3698100-3698900
3241000-3242000	8504000	1770000-1900000	5193000-5193900	3707000-3799900
3261000-3263300	8509000-8509800		5467600-5467200	3830020-3880490
3401000-3409900	8519000-8519700		5501000-5502100	3903300-3903900
3501000-3541009	8523000-8524000		5561000-5561900	3910800-3981100
3694000-3696490	8527500-8529300		5712000-5723000	4205500-4208700
3702000-3702100			5951000	4210000-4211200
8505000			5953500-5953900	4221000-4221900
	(2) Agricultural Crude Foodstuffs	(5) Nonagricultural Manufactured Foodstuffs and Beverages	5955000-5958100	4225200-4280990
	0010600-0015500	0060100-0081600	6002000-6060300	4302000-4321900
(1) Nonagricultural Crude Materials	0037000-0038200	0084000	6212100-6212800	4711000-4799990
0295000-0298500	0088100-0088500	1650100-1650500	6214000-6226900	5054300-5054700
0700000-0729500	1020000-1051100	1711300-1718500	6233100-6250990	5075000
0816000	1060000-1067000	1750000-1760000	6302100-6303000	5077000
0862000-0862600	1101000		6401600-6401900	5090000-5090320
0880000	1191100-1210190		6403500	5130000
0895000-0895700	1250440	(6) Agricultural Semimanufactures	6408100-6418300	5200400-5290850
0906100-0906900	1250600	0820100-0820500	6453000	5350100-5390700
0951000-0962800	1290000-1305500	0917000	6505000-6507000	5393000
0976000	1308000-1308200	0932000-0932100	6541000-6542000	5420010-5420740
0980080-0980350	1311000-1313500	0940100-0940500	6551300-6551900	5464200-5464500
2102000-2105000	1318300-1318500	0943000	6558000-6558200	5466100-5466500
2109500-2109800	1326100-1326200	0974000-0974104	6651000-6651100	5470010-5470530
2131000-2171900	1330310	2220110-2220270	6661000-6662000	5520000-5540900
2302000-2307000	1330330	2220310-2220498	6760000-6760340	5564000-5564500
2309000-2320390	1330360	2241000-2249000	6822000-6826100	5724000-5724100
2800000	1330410-1330510	2253000-2260288	8000000-8050700	6081000-6200990
2921100-2924500	1350000-1378100	3703000	8200000-8258000	6301000-6305900
2933000-2933500	1501300-1501500	8329000	8261000-8290000	6430000-6430300
3243000	1511000-1521000	8380560-8380590	8300000-8325000	6457000-6459900
3690000-3690900	1525000-1537000	8380730-8380740	8330000-8330900	6509000-6509900
4007100-4035500	1539000-1549500		8336000-8380497	6544300-6544900
4038800-4038900	1570000		8380600-8380697	6559000-6559900
4066000	9919400-9919600		8380800-8420290	6790010-6790990
4075000-4080500		(7) Nonagricultural Semimanufactures	8500000-8503000	6835000-6900550
4300000	(3) Nonagricultural Crude Foodstuffs	0300100-0345900	8506000-8508100	7063000-7940290
4590000-4596000	0047000-0059200	0730000-0751900	8511100-8511300	8070800-8170607
4691000-4692900	0083000	0803000-0808990	8521000	8259000-8260000
5000000-5002000	0086200-0087900	0924000	8525000-8525100	8291100
5013100-5053000		2019100-2019200	8721000-8722900	8431000-8441300
5120000-5120700	(4) Agricultural Manufactured Foodstuffs and Beverages	2107200-2108000		8549000-8719909
5190500	0018000-0036900	2119000-2119300	(8) Agricultural Finished Manufactures	8725000-8731209
5300000-5310410	0040000-0046990	2189000-2189400	0990040-0990050	9001000-9919300
5391000		2220280-2220307	2204000	9919700-9990760
5394000-5395900		2308000	2270100-2290580	
5460000-5463100		2330080-2345950	2811100-2815900	
5465000		3006100-3020340		

Schedule A.—WHAT IT IS AND HOW TO USE IT

Introduction

Schedule A is the statistical classification of commodities imported into the United States used in compiling the official United States import statistics. It shows for each commodity description the commodity code numbers to be shown on import entries and withdrawal forms. In addition it shows the country, customs district, subgroup, economic class, unit of quantity, and flag of vessel classifications used in compiling the statistics.

The August 1, 1950 issue corrected to May 1, 1952 superseding the August 1, 1950 edition, is printed in loose-leaf form. A subscription to the Schedule includes the cost of supplemental bulletins and pages to keep it up to date for at least a year from the time of issuance. Announcements of changes will be issued periodically, as required. By following instructions contained in these announcements regarding additions, deletions and substitutions of new pages, the user of the Schedule will at all times have a complete and current Schedule A.

How Revisions Will Be Made

Every change in the Schedule will be announced in an import Public Bulletin. Announcements of changes will identify the changes to be made and will describe the items and the pages affected by the change. When minor changes are made, the appropriate instructions for making the change will be indicated in the bulletin. Revised pages to be substituted for existing pages will be issued for major changes or when particular pages show a number of minor changes.

NOTICE

The August 1, 1950 edition of Schedule A is corrected to May 1, 1952 and includes all changes published in Public Bulletins P.B. A-1 to P.B. A-13, inclusive. Pages dated other than May 1, 1952 are pages where no changes have occurred since the original printing or since they were reprinted as of the date appearing thereon.

XXVII

May 1, 1952

CLASSIFICATION OF IMPORTS
Group 00.--ANIMALS AND ANIMAL PRODUCTS, EDIBLE

SCHEDULE A COMMODITY NUMBER	COMMODITY DESCRIPTION AND ECONOMIC CLASS	UNIT OF QUANTITY	RATE OF DUTY		TARIFF PARAGRAPH
			1930 Tariff Act (except as noted)	Trade agreement	
ANIMALS, EDIBLE (EXCEPT FOR BREEDING)					
Cattle:					
0010 600 *	Weighing less than 200 pounds each (calves)----- (2)	No Lb-----	----- 2½¢ lb-----	----- 1½¢ lb. Can., Mex., bound ¹ GATT.	701
0010 700 *	○ Weighing 200 pounds and less than 700 pounds each----- (2)	No Lb-----	----- 2½¢ lb-----	----- 1½¢ lb. Mex. ¹	
0010 800	Weighing 700 pounds or more each: Cows for dairy purposes----- (2)	No Lb-----	----- 3¢ lb-----	----- 1½¢ lb. Can., bound GATT-----	
0010 900	Cattle, n. s. p. f----- (2)	No Lb-----	----- 3¢ lb-----	----- 1½¢ lb. Can., Mex., bound ¹ GATT.	
0012 000	Sheep and lambs----- (2)	No-----	\$3 each-----	\$1.50 each Mex. ¹ 75¢ each GATT ²	702
0012 200	Goats----- (2)	No-----	\$3 each-----		703
0013 000	Hogs----- (2)	Lb-----	2¢ lb-----	1¢ lb. Can., bound GATT-----	
Poultry, live:					
0014 000	Turkeys----- (2)	Lb-----	8¢ lb-----	4¢ lb. Can----- 2¢ lb. GATT-----	711
0015 000	Chickens, ducks, geese, and guineas----- (2)	Lb-----	8¢ lb-----	4¢ lb. Can----- 2¢ lb. GATT-----	
0015 300	Baby chicks of poultry----- (2)	No-----	4¢ each-----	2¢ ea. GATT-----	
MEAT PRODUCTS					
Fresh, chilled, or frozen:					
0018 000	Beef----- (4)	Lb-----	6¢ lb-----	3¢ lb. Cuba----- 3¢ lb. GATT-----	701
0019 000	Veal----- (4)	Lb-----	6¢ lb-----	3¢ lb. Cuba----- 3¢ lb. GATT-----	
Pork:					
0020 100 *	Fresh or chilled----- (4)	Lb-----	2½¢ lb-----	1½¢ lb. Can., bound GATT-----	703
0020 500	Frozen----- (4)	Lb-----	2½¢ lb-----	1½¢ lb. GATT-----	
0021 000	Mutton----- (4)	Lb-----	5¢ lb-----	2½¢ lb. GATT-----	702
0022 000	Lamb----- (4)	Lb-----	7¢ lb-----	3½¢ lb. GATT-----	
0023 100	Goat meat----- (4)	Lb-----	5¢ lb-----	2½¢ lb. GATT-----	
0023 200	Reindeer meat----- (4)	Lb-----	6¢ lb-----	3¢ lb. GATT ²	
0023 300	Venison----- (4)	Lb-----	6¢ lb-----	3¢ lb. U. K.----- 1½¢ lb. GATT-----	704
0023 500	Game (except birds), n. s. p. f. (specify by name)----- (4)	Lb-----	6¢ lb-----	3¢ lb. GATT-----	
0023 600	Edible offal: Livers, kidneys, tongues, hearts, sweetbreads, tripe, and brains.----- (4)	Lb-----	6¢ lb----- 20 % min-----	3¢ lb. Can----- 15% min. Can----- 1½¢ lb. GATT----- 7½% min. GATT-----	706
0023 800 ¹	Prox lega (C. D. 610-4/6/42)----- (4)	Lb-----	10%-----	8% bound Cuba GATT-----	1558
0023 900	Meats, n. s. p. f----- (4)	Lb-----	6¢ lb----- 20% min-----	3¢ lb. GATT ² ----- 10% min. GATT ² -----	706
Birds, including poultry:					
Dead dressed, or undressed:					
0024 000	Turkeys----- (4)	Lb-----	10¢ lb-----		
0025 400	Chickens and guineas----- (4)	Lb-----	10¢ lb-----	6¢ lb. Can----- 3¢ lb. GATT-----	
0025 500	Ducks and geese----- (4)	Lb-----	10¢ lb-----	6¢ lb. Can----- 3¢ lb. GATT-----	
0025 900	Birds, n. s. p. f. (including game birds)----- (4)	Lb-----	10¢ lb-----	5¢ lb. U. K.----- 2½¢ lb. GATT-----	
Prepared or preserved:					
0026 100 ¹	Chickens, prepared by removal of the feathers, heads, and all or part of the viscera, with or without removal of the feet, but not cooked or divided into portions. (formerly part of 0026 800 ¹)----- (4)	Lb-----	10¢ lb-----	5¢ lb. GATT ¹ ² ³ ⁴ ----- 5¢ lb. GATT ¹ -----	712
0026 700 ¹	Birds, including poultry, prepared or preserved n. s. p. f. (formerly 0026 200 ¹ and part of 0026 800 ¹)----- (4)	Lb-----	10¢ lb-----	5¢ lb. GATT ¹ ² ³ ⁴ ----- 5¢ lb. GATT ¹ ² -----	

For explanation of superior notations against commodity numbers and GATT rates, refer to Foreword

¹ Contingent upon proviso specified in T. D. 51802

² Rate under GATT (T. D. 51909) not applicable to turkeys

³ Applicable to "whole chicken, packed in air-tight containers"
Rate effective December 11, 1950 to January 25, 1952 inclusive
(T. D. 52587) (T. D. 52674)

May 1, 1952

CLASSIFICATION OF IMPORTS

Group 00.--ANIMALS AND ANIMAL PRODUCTS, EDIBLE--Continued

SCHEDULE A COMMODITY NUMBER	COMMODITY DESCRIPTION AND ECONOMIC CLASS	UNIT OF QUANTITY	RATE OF DUTY		TARIFF PARAGRAPH
			1930 Tariff Act (except as noted)	Trade agreement	
	MEAT PRODUCTS--Continued				
0028 000	Prepared or preserved--Continued Canned beef, including corned beef-- (4)	Lb-----	6¢ lb----- 20% min-----	3¢ lb. Arg., Urug., Para--- 20% min. Arg., Urug., Para---	706
0029 000	Beef and veal, pickled or cured ¹ --- (4)	Lb-----	6¢ lb----- 20% min-----	3¢ lb. Arg., Urug., Para--- 20% min. Arg., Urug., Para---	

¹ Jerked beef imported into Puerto Rico (free) for emergency (T.D. 50599) (Indicated by rate provision 17).

CLASSIFICATION OF IMPORTS

Group 00.--ANIMALS AND ANIMAL PRODUCTS, EDIBLE--Continued

SCHEDULE A COMMODITY NUMBER	COMMODITY DESCRIPTION AND ECONOMIC CLASS	UNIT OF QUANTITY	RATE OF DUTY		TARIFF PARAGRAPH
			1930 Tariff Act (except as noted)	Trade agreement	
MEAT PRODUCTS--Continued					
Prepared or preserved--Continued					
Pork:					
Hams, shoulders, and bacon (include backs, butts, and picnics):					
0030 100 ^a	Not cooked, boned, or canned, or made into sausage. (4)	Lb-----	3½¢ lb-----	2¢ lb. Can., bound GATT-----	703
0030 300 ^L	Pork sausage, except fresh pork sausage (from 0030 900 ^a). (4)	Lb-----	3½¢ lb-----	1 5/8 ¢ lb. GATT ^L -----	
0030 900 ^a	Other----- (4)	Lb-----	3½¢ lb-----	-----	
Other, pickled or salted:					
0031 100 ^a	Not cooked, boned, or canned, or made into sausage. (4)	Lb-----	3½¢ lb-----	2¢ lb. Can., bound GATT-----	703
0031 300 ^L	Pork sausage, except fresh pork sausage (from 0031 900 ^a). (4)	Lb-----	3½¢ lb-----	1 5/8 ¢ lb. GATT ^L ----- 2.6¢ lb. ^{U.S.} bound Cuba-----	
0031 900 ^a	Other----- (4)	Lb-----	3½¢ lb-----	2.6¢ lb. bound Cuba GATT-----	
0032 100 ^a	Meat pastes (except liver pastes), prepared or preserved, n.s.p.f., packed in airtight containers weighing each, with container, not over 3 ounces. (4)	Lb-----	6¢ lb----- 20% min-----	6¢ lb. U.K.----- 10% min. U.K.----- 3¢ lb. GATT----- 10% min. GATT-----	
0032 900 ^a	Frog legs, prepared or preserved--- (C. D. 610-4/6/42). (4)	Lb-----	20%-----	¾¢ Cuba GATT----- 12% GATT ^L -----	1558
0032 900 ^a	Canned meats, n. e. s., and prepared or preserved meats, n.s.p.f. (include liver paste) (specify by name). (4)	Lb-----	6¢ lb----- 20% min-----	3¢ lb. Arg., Urug., Para----- 20% min. Arg., Urug., Para----- 3¢ lb. GATT----- 10% min. GATT-----	706
Sausage casings:					
0034 900	Sheep, lamb, and goat casings----- (4)	Lb-----	Free-----	Free, bound Turk., Arg., Urug., Iran., GATT-----	1755
0035 300	Sausage casings, n.s.p.f. (specify by name) (Include weasands, bladders, and intestines.) (4)	Lb-----	Free-----	Free, bound Turk., Arg., Urug., Iran., Para, GATT-----	
ANIMAL OILS AND FATS, EDIBLE					
0036 900	Lard----- (4)	Lb-----	3¢ lb-----	-----	703
0036 100	Lard compounds and lard substitutes made from animal or vegetable oils and fats. (4)	Lb-----	5¢ lb ^a -----	-----	
0036 200	Oleo oil----- (4)	Lb-----	1¢ lb. + 3¢ lb. I.R.C.-----	½¢ lb. Arg., Urug. + 1½¢ lb. I.R.C. Arg., Urug.-----	701
0036 300	Oleo stearin----- (4)	Lb-----	1¢ lb. + 3¢ lb. I.R.C.-----	½¢ lb. Arg., Urug. + 1½¢ lb. I.R.C. Arg., Urug.-----	\$2491 (c) I.R.C.
0036 500	Oleomargarine and other butter substitutes made from animal or vegetable oils and fats. (4)	Lb-----	14¢ lb. ^a -----	7¢ lb. GATT-----	709
0036 900	Beef and mutton tallow (include oleo stock) (T.D. 48976.) (Inedible tallow, see 0815 600.) (4)	Lb-----	½¢ lb. + 3¢ lb. I.R.C.-----	½¢ lb. Arg., Urug., Para. + 1½¢ lb. I.R.C., Arg., Urug., Para.----- 1/8¢ lb. GATT ^a + ½¢ lb. I.R.C. GATT ^a -----	701 \$2491 (a) I.R.C.
0036 900 ^a	Animal oils and fats, n.e.s. ^b (Include edible chicken fat formerly reported in 0821 100.) (4)	Lb-----	20%-----	10% GATT ^a -----	52
DAIRY PRODUCTS					
Milk and cream:					
0037 900	Cream----- (2)	Gal-----	56.6¢ gal-----	56.6¢ gal. ^a bound Can., GATT, GATT ^a ----- 28.3¢ gal. ^a Can----- 20¢ gal. ^a GATT----- 13¢ gal. ^a GATT ^a -----	707
0038 900	Whole milk----- (2)	Gal-----	6.5¢ gal-----	6.5¢ gal. ^a bound Can. GATT----- 3½¢ gal. ^a Can----- 2¢ gal. ^a GATT-----	
0039 200	Skim milk and buttermilk----- (2)	Gal-----	2 1/20¢ gal-----	2 1/20¢ gal. bound Can----- 1½¢ gal. GATT-----	

For explanation of superior notations against commodity numbers and GATT rates, refer to Foreword.

^a Applicable to weasands, bladders, and intestines produced from sheep, lambs, and goats.

^b For supplemental numbers reporting import tax under Internal Revenue Code, refer to Foreword.

^c Not previously provided for in Schedule A.

^d Applicable to imports in excess of quantity restriction (T.D. 48752) (T.D. 51802) (T.D. 52739).

^e Subject to quota provisions (T.D. 48752) (T.D. 51802) (T.D. 52739).

May 1, 1952

CLASSIFICATION OF IMPORTS

2a

Group 00. -- ANIMALS AND ANIMAL PRODUCTS, EDIBLE -- Continued

SCHEDULE A COMMODITY NUMBER	COMMODITY DESCRIPTION AND ECONOMIC CLASS	UNIT OF QUANTITY	RATE OF DUTY		TARIFF PARAGRAPH
			1930 Tariff Act (except as noted)	Trade agreement	
	DAIRY PRODUCTS -- Continued				
	Milk and cream -- Continued				
	Condensed or evaporated milk:				
	In airtight containers:				
0040 000	Unsweetened ----- (4)	Lb -----	1.8¢ lb -----	1¢ lb. GATT -----	708 (a)
0040 100	Sweetened ----- (4)	Lb -----	2.75¢ lb -----	1.75¢ lb. GATT -----	
0040 700	All other (specify by name) ----- (4)	Lb -----	2.53¢ lb -----	1.5¢ lb. GATT -----	

January 26, 1962

U. S. DEPARTMENT OF COMMERCE

CHARLES SAWYER, Secretary

BUREAU OF THE CENSUS

ROY V. PEEL, Director (Appointed March 9, 1960)

J. C. CAPT, Director (Retired August 17, 1949)

CENSUS OF MANUFACTURES: 1947**PRODUCT SUPPLEMENT**

Quantity and Value of Shipments and/or
Production for More Than 6,000
Products Manufactured by
United States Industry



Prepared under the supervision of

MAXWELL R. CONKLIN

Chief, Industry Division

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1950

General Explanations

I. INTRODUCTION

This volume includes all the information relative to the production and shipments of individual products published in the 81 separate industry reports and in Volume II, "Statistics by Industry," of the 1947 Census of Manufactures. In addition to product statistics, the industry reports present information on such subjects as employment, pay rolls, cost of materials, inventories, and capital expenditures, together with a brief description of the industries covered. Since the present volume was reproduced from the plates for these earlier reports, there are occasional references to the descriptive material or to another table in the industry report.

The 1947 Census is the first to be taken since 1939. The first Census of Manufactures covered the year 1809 and a census was taken at 10-year intervals in connection with the Decennial Census of Population up to and including 1899, with the exception of 1829. It was conducted at 5-year intervals from 1904 through 1919, and every other year from 1921 through 1939, but was suspended during the war period. Present legislation provides for a Census of Manufactures to cover the year 1953 and every fifth year thereafter.

2. ESTABLISHMENTS COVERED IN THE CENSUS

The 1947 Census covered all establishments primarily engaged in manufacturing as defined in the Standard Industrial Classification Manual, Volume I, dated November 1945. The following types of activities are defined as nonmanufacturing by the Standard Industrial Classification and so are excluded from the Census of Manufactures whether or not they are associated with the production of commodities of a kind ordinarily produced in factories:

Manufacturing activities of certain establishments which sell most of their products at retail on the premises, e. g., single-shop retail bakeries.

Fabricating operations performed at the site of construction by contractors.

Production by public utilities of electric light and power or of heating, cooking, and illuminating gas distributed through mains.

Custom work to the individual order of household consumers, such as custom tailoring or woodworking.

Repair and other service activities except specified services performed "for the trade."

Machine shops engaged exclusively or almost exclusively in repair work and railroad repair shops are also excluded.

To the extent that establishments of this type produce a significant proportion of the total national production of a commodity, the data presented in the following pages are too low. This qualification is important in only a few instances, notably: bakery products; dried fruit; prepared feeds; Venetian blinds; awnings; and millwork.

While the 1947 report forms were distributed and for the most part returned by mail, manufacturers who did not send in a report or whose reports were incomplete or otherwise inadequate were reached by telephone or personal visit from the Field Offices of the Bureau. After the canvass was completed, however, the Bureau undertook an intensive enumeration in representative sample areas in order to get some measure of the degree of coverage achieved. Preliminary results of this coverage check indicate that for the country as a whole the census included in its tabulations reports from establishments accounting for over 98 percent of all manufacturing employees as defined for census purposes. A large proportion of the employees not covered were found to be employed in small establishments which also engaged at the same location in retail trade, custom work, repair services, construction, or other nonmanufacturing activities. Because of the "marginal" character of such establishments either they were not included in the mailing lists used or when the reports were received they did not contain adequate information and so were classified as nonmanufacturing.

3. THE CENSUS REPORT FORM

The early censuses used a single report form and the published information was limited to such general statistics as employment, pay rolls, capital invested, total value of products and cost of materials. In more recent censuses, however, the majority of manufacturers have received report forms containing preprinted list of products in order to assure uniform reporting and so permit the publication of product information in the detail needed by industry or governmental agencies. In 1947, specially-designed report forms, numbering about 200, were sent to manufacturers in all but 26 out of 453 industries. These 26 industries accounted for less than one percent of

CENSUS OF MANUFACTURES: 1947

total employment in that year. For these industries the product information is usually restricted to a single value figure.

In addition, a short report form was used by some 40,000 smaller establishments in a large number of industries. Although the establishments reporting on this form accounted for less than one percent of total manufacturing employment, they were of considerably greater importance in some industries and account for a significant proportion of the residual or "not classified by kind" items in the product tables for such industries. Other sources of these items were combined entries in the product sections of the industry forms and those instances in which establishments described in their own words their secondary products, i.e., their shipments of products normally produced in other industries and not specifically listed on their industry form.

4. PRODUCTS

Most manufacturers were asked to report their shipments and, in many cases, their production of a specified list of products known to be produced by a significant number of establishments in their industry. The list of products was prepared for each industry after intensive study of the 1939 reports, and review and approval by a number of Inter-Agency Committees set up within the Federal Government. In developing the product sections of the 1947 report forms, the Bureau benefited from the advice of trade association officials in nearly all industries. In addition, preliminary drafts of the form were mailed to selected manufacturers in every industry; and, where feasible, the form was revised in accordance with their suggestions.

In all, about 6,500 individual product items were specified on the various forms. The term "products," as used in the Census of Manufactures, may have a broader or narrower content than in common usage. For example, automotive gasoline was reported as a single item. On the other hand, cotton broad-woven goods were distributed into nearly 200 individual "products" according to type of weave, width of fabric, and other specifications. For some items, e.g., bearings, it would have been desirable to obtain product information in much greater detail than that actually requested, but the extent to which the production of individual types and sizes is concentrated in one or two individual companies would have made it impossible to publish detailed data without revealing the operations of these companies. Thus the 6,500 individual products included on the forms merely represent the number of items for which it was considered practical to publish census information.

Of the 6,500 items included on the forms, data were actually published for approximately 6,100.

The balance were eliminated because their publication would involve disclosure of the activities of individual companies or because it turned out that a number of important producers could not report products in the detail requested; in all such cases the product data were combined with that for a similar item or included in an "all other" category. In this respect 1947 experience compares favorably with that for 1939 when of approximately the same number of items included, only about 4,000 could be shown. The principal reason for this difference seems to have been that in 1947, a large number of products were eliminated from the forms because they were of very limited economic importance; in general, a product was not included if its 1939 production was valued at less than \$2 million. In 1939 the loss of product detail owing to disclosure or poor reporting was particularly heavy in products of this magnitude. On the other hand, product items which were reported in large volume by a large number of establishments in 1939 were split up in 1947 into a number of products, where feasible.

In designing the 1947 product inquiries more weight was given to current industry practice and requirements than to comparability with 1939. In consequence, at the individual product level 1939 data are available for only about 1,500 product items. In many instances, however, comparable 1939 value and sometimes quantity data are available for the sum of two or more 1947 product items; on this basis, 1939 data are shown for about 2,500 of the 1947 products. Comparable 1939 data are more often available for basic materials such as steel and textiles than for finished manufactures such as machinery or apparel.

5. ABBREVIATIONS

The following abbreviations and symbols recur frequently both in the tables and footnotes:

n. a.	not available
n. e. c.	not elsewhere classified
M	thousand
mil.	million
bil.	billion
std.	standard
lin.	linear
b. m.	board measure
equiv.	equivalent
-----	zero or not applicable
(d)	withheld to avoid disclosing figures for individual companies

Other abbreviations, such as lb., gal., yd., doz., bbl., are used in the customary sense. Where the term tons only is used, it refers to short tons of 2,000 lbs. Where the figures are expressed in tons of 2,240 lbs., the unit of measure is specified as long tons or gross tons.

Chapter I—FOOD AND KINDRED PRODUCTS

MEAT PRODUCTS

TABLE A.—QUANTITY AND VALUE OF PRODUCTS, TOTALS FOR THE UNITED STATES: 1947 AND 1939

[Money figures in thousands of dollars]

PRODUCT	1947						1939	
	Net shipments		Gross shipments and interplant transfers		Purchases and interplant receipts		Production ¹	
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
	(M lbs.)		(M lbs.)		(M lbs.)		(M lbs.)	
Fresh beef, total²	7,569,143	\$2,645,771	8,635,155	\$2,971,372	1,066,012	\$325,601	n.a.	n.a.
Carcass	6,401,784	2,263,961	7,377,335	2,571,657	975,551	307,696	5,462,233	\$762,725
Variety meats	373,286	93,675	458,708	110,013	85,422	16,338	n.a.	n.a.
Fresh beef, not specified by kind	794,073	288,135	799,112	289,702	5,039	1,567		
Fresh veal, total²	1,014,701	341,568	1,118,199	373,498	103,498	31,930	n.a.	n.a.
Carcass	842,236	277,986	939,108	307,696	96,872	29,680	672,503	97,143
Variety meats	53,828	20,102	59,829	22,030	6,001	1,928	n.a.	n.a.
Fresh veal, not specified by kind	118,637	43,480	119,262	43,802	625	322	n.a.	n.a.
Fresh lamb and mutton, total²	748,932	284,057	811,542	306,654	62,610	22,597	n.a.	n.a.
Carcass	687,808	265,923	747,335	287,648	59,527	21,725	780,423	128,313
Variety meats	34,889	6,831	37,921	7,687	3,032	856	n.a.	n.a.
Fresh lamb and mutton, not specified by kind	26,235	11,303	26,286	11,319	51	16	n.a.	n.a.
Fresh pork, total²	3,066,018	1,168,541	4,356,513	1,630,150	1,290,495	461,609	n.a.	n.a.
Carcass	2,498,302	988,738	3,681,300	1,420,536	1,182,998	431,798	n.a.	n.a.
Variety meats	190,996	31,233	285,225	56,910	94,229	25,677	n.a.	n.a.
Fresh pork, not specified by kind	376,720	148,570	389,988	152,704	13,268	4,134	n.a.	n.a.
Lard (including rendered pork fat)	1,816,201	466,490	2,049,745	522,845	233,544	56,355	1,552,338	107,422
	(thousands)		(thousands)		(thousands)		(thousands)	
Hides, skins, and pelts, total		\$330,890		\$354,851		\$23,961		\$97,931
Cattle	17,972	211,945	18,549	215,305	577	3,360	12,055	63,995
Calf	8,459	57,630	9,048	60,544	589	2,914	5,377	11,887
Sheep and lamb	16,099	39,183	20,539	51,249	4,440	12,066	25,645	21,811
Other hides and skins	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	352	238
Hides, skins, and pelts, not specified by kind		2,132		27,753		5,621	n.a.	n.a.
	(M lbs.)		(M lbs.)		(M lbs.)		(M lbs.)	
Other slaughtering plant products, total		35,366		44,364		8,998		n.a.
Other meat (goat, horse, etc.)	125,704	15,789	156,068	18,876	30,364	3,087	18,762	1,284
Pulled wool ³	22,019	17,234	30,460	22,889	8,441	5,655	37,225	16,737
Animal products for medicinal use		2,343		2,599		256	n.a.	n.a.
Slaughtering plant products, not specified by kind		198,248		307,856		109,608		52,122
Pork, processed and cured, total	2,828,017	1,472,875	3,607,657	1,814,673	779,640	\$41,798	n.a.	n.a.
Sweet pickled and dry cured	148,993	62,148	644,310	279,680	495,317	217,532	n.a.	n.a.
Dry salt	354,730	99,459	424,961	118,960	70,231	19,501	n.a.	n.a.
Smoked ham and picnics	867,461	461,847	921,164	489,160	53,703	27,313	n.a.	n.a.
Sliced bacon	615,869	371,578	662,949	396,367	47,080	24,789	n.a.	n.a.
Other smoked pork products	445,890	214,906	477,663	230,310	31,773	15,404	n.a.	n.a.
Cooked, boiled, or ready-to-eat pork	274,103	195,065	295,194	208,392	21,091	13,327	220,599	63,297
Processed pork, not specified by kind	120,971	67,872	181,416	91,804	60,445	23,932	n.a.	n.a.
Sausage, meat loaves, etc. (except canned) ²	2,359,113	961,654	2,525,639	1,022,445	166,526	60,791	1,673,571	273,807
Canned meats ²	1,011,352	406,151	1,221,583	480,977	210,231	74,996	341,425	65,770
Miscellaneous cured meats and casings, total		64,163		119,998		\$7,335		n.a.
Beef, pickled or cured	30,608	18,000	62,325	28,974	31,717	1,974	n.a.	n.a.
Beef, dried or dehydrated	22,491	17,532	32,266	23,934	9,775	6,402	n.a.	n.a.
Beef, cooked or roasted	4,169	2,827	4,291	2,897	122	70	n.a.	n.a.
Other processed beef (smoked tongue, etc.)	10,309	7,977	10,309	7,977			n.a.	n.a.
Veal, cured	4,143	1,588	4,894	1,862	751	274	n.a.	n.a.
Lamb and mutton, cured	189	44	1,898	504	1,709	460	n.a.	n.a.
Casings, beef	n.a.	2,223	n.a.	8,124	n.a.	5,901	n.a.	2,495
Casings, hog	n.a.	11,716	n.a.	27,369	n.a.	15,653	n.a.	7,932
Casings, sheep and lamb	n.a.	2,172	n.a.	16,146	n.a.	13,974	n.a.	6,976
Casings, other natural	n.a.	84	n.a.	2,211	n.a.	2,127	n.a.	n.a.
Prepared meat products, not specified by kind		63,718		69,809		6,091		2,388
Fresh and processed meats, not specified by kind						72,824		

See footnotes at end of table.

CENSUS OF MANUFACTURES: 1947

TABLE A.—QUANTITY AND VALUE OF PRODUCTS, TOTALS FOR THE UNITED STATES: 1947 AND 1939—Continued.

PRODUCT	1947		1939	
	Net shipments		Production	
	Quantity	Value	Quantity	Value
	(M lbs.)		(M lbs.)	
Chicken and foot, New York dressed, total	607,337	\$225,300	437,400	\$74,479
Frozen or hard-chilled (box-packed)	471,638	174,490	n.a.	n.a.
Other pack (used in barrels, etc.)	132,394	49,718	n.a.	n.a.
Pack not specified	3,105	992		
Other poultry, New York dressed, total	172,342	72,633	130,043	26,043
Turkeys, total	162,142	65,356	112,316	23,000
Frozen or hard-chilled	136,462	58,397	n.a.	n.a.
Other pack	23,771	10,262	n.a.	n.a.
Pack not specified	1,890	777		
Ducks, geese, etc.	10,200	3,477	17,727	2,973
Chicken and foot, eviscerated, total	149,378	73,789		
Frozen or hard-chilled	116,436	62,645	n.a.	n.a.
Other pack	32,920	17,114		
Other poultry, eviscerated, total	38,618	29,811		
Turkeys, total	34,923	26,331	n.a.	n.a.
Frozen or hard-chilled	n.a.	1,973		
Other pack	n.a.	1,680		
Ducks, geese, etc.	3,595			
Small game and byproducts (fat, feathers, etc.)		1,825		734
Poultry, not specified by kind		11,793		7,493

n.a.—Not available.

¹ 1939 production includes an unknown amount of duplication because of the use of products of some establishments as materials by others. See Sixteenth Census of the United States: 1940, Manufactures 1939, Volume II, part 1, table 8, page 41, for data believed to account for the bulk of this duplication.

² Includes frozen.

³ Figures represent the output of establishments classified in the "Meat packing, wholesale" and "Grease and tallow" industries. Detailed product information was not obtained from establishments primarily engaged in wool pulling (Industry 3699).

⁴ Includes total sales (\$211,763,000) of 328 establishments reporting on a short form which did not call for a breakdown of sales. Purchases of these establishments are not included in the purchases figure.

⁵ For detailed production data, see table 6-B.

⁶ Includes total sales (\$28,376,000) of 137 establishments reporting on a short form which did not call for a breakdown of sales. Purchases of these establishments are not included in the purchases figure.

⁷ Includes eviscerated.

TABLE B.—PRODUCTION OF SELECTED MEAT PRODUCTS, TOTALS FOR THE UNITED STATES: 1947

(Figures in thousands of pounds)

PRODUCT	Quantity produced	PRODUCT	Quantity produced
Fresh beef, total	3,005,380	Sausage, meat loaves, etc. (except canned)—Continued	
Carcass	7,032,028	Other hard dry sausage	29,823
Variety meats	310,363	Other semidry sausage	98,509
Fresh beef, not specified by kind	923,876	Meat loaves	236,475
Fresh veal, total	1,169,630	Jellied goods and other preparations	85,537
Carcass	1,056,250	Sausage and other prepared meats, not specified by kind	387,717
Variety meats	21,517	Canned meats, total	1,009,362
Fresh veal, not specified by kind	142,863	Lancet meats	332,134
Fresh lamb and mutton, total	788,235	Canned hams	49,171
Carcass	718,312	Vienna sausage	70,430
Variety meats	41,398	Other frankfurters, including sausages in oil	26,001
Fresh lamb and mutton, not specified by kind	28,415	Potted and deviled meats, except deviled ham	43,037
Fresh pork	9,435,894	Deviled ham	10,616
Carcass	8,213,030	Sliced dried beef	19,471
Variety meats	680,514	Liver products	36,212
Fresh pork, not specified by kind	761,730	Meat stew, all types	39,844
Lard (including rendered pork fat)	1,858,367	Spaghetti-meat products, all types	13,906
Sausage, meat loaves, etc. (except canned), total	2,367,981	Tongue, other than pickled	10,796
Fresh pork sausage	247,074	Vinegar pickled products	30,289
Other fresh sausage	92,321	Canned and roast beef	24,600
Frankfurters	324,181	Meat with gravy	33,667
Bologna	405,502	Other canned meat products, except dog and cat food	221,914
Liver sausage and brunschweiler	165,360	2½% or more meat	63,079
Salami, all types	85,423	Canned meat, not specified by kind	32,845

¹ Production of establishments reporting detailed statistics. See table 6-A for value of shipments of establishments not reporting detail.

² This figure is about 4 percent higher than that published in the Census "Facts for Industry" series for 1947. The Census of Manufactures included some establishments not reporting in the "Facts for Industry" survey.

EXHIBIT "12"

EXECUTIVE OFFICE OF THE PRESIDENT
Bureau of the Budget
Division of Statistical Standards

STANDARD
INDUSTRIAL CLASSIFICATION

VOLUME I. - MANUFACTURING INDUSTRIES
Part 2. - Description of Industries

TECHNICAL COMMITTEE
ON INDUSTRIAL CLASSIFICATION

Washington, D.C.
1940

123

**EXECUTIVE OFFICE OF THE PRESIDENT
Bureau of the Budget
Division of Statistical Standards**

STANDARD INDUSTRIAL CLASSIFICATION

VOLUME I.—MANUFACTURING INDUSTRIES

Part 2.—Description of Industries

**TECHNICAL COMMITTEE
ON INDUSTRIAL CLASSIFICATION**

**Washington, D. C.
1940**

INTRODUCTION

Volume I, part 2, of the Standard Industrial Classification Manual has been prepared by the Technical Committee on Industrial Classification, which includes representatives of the Division of Statistical Standards (formerly Central Statistical Board) of the Bureau of the Budget, the Bureau of the Census, the Bureau of Labor Statistics, the United States Treasury Department, the United States Tariff Commission, the Division of Placement and Unemployment Insurance of the New York State Department of Labor, and the Bureau of Employment Security and the Bureau of Old-Age and Survivors Insurance of the Social Security Board.

Part 2 describes each 4-digit manufacturing industry listed in volume I, part 1, with the exception of certain industries for which no descriptions appeared necessary. This part of the Standard Industrial Classification Manual is designed for general reference and training purposes.

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MANUFACTURING INDUSTRIES

The Division as a Whole

Manufacturing may be defined as the mechanical or chemical transformation of mineral or organic substances in establishments which are usually described as plants, factories, or mills, and which are characterized by the use of power equipment, machine tools, and materials-handling equipment. The assembly of component parts of manufactured products is also considered manufacturing if the new product is neither a structure nor other fixed improvement.

The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying. The final product of a manufacturing industry may be "finished" in the sense that it is ready for utilization or consumption, or it may become the "raw material" of an industry engaged in further manufacture. For example, the product of the copper smelter is the raw material of the electrolytic refinery; refined copper is the raw material used by copper wire mills; and copper wire is the raw material used by certain electrical equipment manufacturers.

The materials processed by manufacturing establishments may be purchased directly from producers, obtained through customary trade channels, or secured without recourse to the markets by transferring the product from another establishment under the same ownership. Production is usually carried on for the wholesale market, for interplant transfer, or to order for industrial users, rather than to the individual order of the household consumer.

In applying this classification, the unit to be classified is the establishment. In most cases the industry assignment is determined on the basis of the principal product made in the establishment, but in a number of instances other criteria are used. In classifying rolling mills, for example, the distinguishing feature is the type of machinery employed; thus, "continuous" and "non-continuous" mills are separately classified. In the classification of rubber and leather footwear, raw material is the basis of classification. Also, provision is made for the classification of some industries by type of operation--contract dress manufacturers are distinguished from jobbers or inside factories.

Auxiliary units, such as power plants, buying offices, laboratories, repair shops, garages or warehouses, operated by a manufacturing establishment for its own use, are classified according to the primary activity of the manufacturing establishment. Similarly, central and district administrative offices are included with the manufacturing establishment when they are not primarily wholesale outlets.

There are borderline cases between the Manufacturing Division and the other divisions in the classification system. Many specific instances will be found in the descriptions of the individual industries. A few of the more important examples are:

Agriculture, Forestry, and Fishery

Processing on farms is not considered manufacturing if the raw materials are grown on the farm and if the manufacturing activities are on a small scale without the extensive use of paid labor. Other exclusions are custom grist milling, threshing, and cotton ginning.

Mining

The dressing and beneficiating of ores, and the breaking, washing, and grading of coal are not considered to be manufacturing.

Construction

Fabricating operations performed at the site of construction by contractors are not considered as manufacturing, but the prefabrication of sheet-metal, concrete, and terrazzo products and similar construction materials is included in the manufacturing Division.

Wholesale and Retail Trade

Establishments engaged in the following types of operation are excluded from the Manufacturing Division: assembling, grading, and preparing fruits and vegetables for the market; pasteurizing and bottling milk; shelling and roasting nuts; cleaning, shucking, and packing fresh clams, oysters, and similar seafoods. Retail stores producing some or all of the products sold on the premises are not included in the manufacturing Division.

Transportation, Communication and Other Public Utilities

Railroad repair shops rebuilding and repairing locomotives and cars are excluded from the Manufacturing Division; while shops building new locomotives and car are included.

Services

In addition to certain of the service industries previously mentioned, a number of other repair trades, hand trades, and custom industries are excluded from the Manufacturing Division, such as power laundries; automobile, electrical, radio, jewelry, watch, furniture, upholstery, shoe, and clothing repair shops; blacksmiths, etc.

MAJOR GROUP 20.--FOOD AND KINDRED PRODUCTS

The Major Group as a Whole

This group of industries includes establishments manufacturing foods and beverages for human consumption, and certain related products such as artificial ice, chewing gum, and prepared feeds for animals and fowls.

Group No.	Industry No.
-----------	--------------

201

MEAT PRODUCTS

2011

MEAT PACKING, WHOLESALE

Description. Establishments primarily engaged in slaughtering cattle, hogs, sheep and other animals for their own account, to be sold fresh, or to be used on the same premises as the raw material in canning, salting, smoking or otherwise curing for the trade. Packing houses which do no slaughtering but purchase fresh meat from others are included in this industry. Establishments manufacturing sausages and meat specialties from meats not produced in the same establishment are classified in industry 2013.

2012

CUSTOM SLAUGHTERING, WHOLESALE

Description. Establishments primarily engaged in slaughtering cattle, hogs, sheep and other animals on a contract basis for the trade. Hides and other by-products may be retained in partial payment for this service, and may therefore be reported as the principal products of such establishments.

2013

SAUSAGES, PREPARED MEATS, AND OTHER MEAT PRODUCTS--NOT MADE IN MEAT-PACKING ESTABLISHMENTS

Description. Establishments primarily engaged in manufacturing sausages, prepared meats, and meat specialties, but which perform no slaughtering operations on the premises. Establishments dressing and canning poultry, rabbits, and other small game are included in industry 2015.

Major Group 20.--Food and Kindred Products (Cont'd)

Group No.	Industry No.
-----------	--------------

201	<u>MEAT PRODUCTS (Cont'd)</u>
-----	-------------------------------

2014	<u>SAUSAGE CASINGS--NOT MADE IN MEAT-PACKING ESTABLISHMENTS</u>
------	---

Description. Establishments primarily engaged in manufacturing sausage casings from animal, artificial, or synthetic materials.

2015	<u>POULTRY DRESSING AND PACKING, WHOLESALE</u>
------	--

Description. Establishments primarily engaged in dressing, packing and canning poultry, rabbits, and other small game for the trade.

202	<u>DAIRY PRODUCTS</u>
-----	-----------------------

2021	<u>CREAMERY BUTTER</u>
------	------------------------

Description. Establishments primarily engaged in manufacturing creamery butter. Milk and cream purchasing stations and the production of butter on farms are not considered to be manufacturing industries. Establishments manufacturing process and lard butter are classified in Industry 20250.

2022	<u>CHEESE, NATURAL OR PROCESS</u>
------	-----------------------------------

Description. Establishments primarily engaged in manufacturing all types of natural cheese, and which may produce process cheese on the same premises. Establishments primarily engaged in manufacturing process cheese made from natural cheese not produced in the same establishment are classified in Industry 2025.

2023	<u>CONDENSED AND EVAPORATED MILK</u>
------	--------------------------------------

Description. Establishments primarily engaged in manufacturing condensed and evaporated milk, and related products such as dried and powdered milk and whey, and ice cream mix.

EXHIBIT "13"

UNITED STATES OF AMERICA

EXECUTIVE OFFICE OF THE PRESIDENT, BUREAU OF THE BUDGET

Harold D. Smith, Director

WAR PRODUCTION BOARD

Donald M. Nelson, Chairman

DEPARTMENT OF THE TREASURY, PROCUREMENT DIVISION

Clifton E. Mack, Director

STANDARD COMMODITY CLASSIFICATION

VOLUME I

STANDARD CLASSIFIED
LIST OF COMMODITIES

Technical Paper No. 26

Prepared by the Technical Committee
on Standard Commodity Classification

(This edition supersedes all previous issues)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1943

MAJOR GROUP 61—FOOD, MANUFACTURED

61 0000	FOOD, MANUFACTURED
61 1000	MEAT PRODUCTS
61 1100	Meats, Fresh, Chilled, or Frozen
61 1110	Beef
61 1120	Veal
61 1130	Mutton
61 1140	Lamb
61 1150	Pork
61 1160	Horse meat
61 1180	Liver, tongue, heart, kidney and other edible offal
61 1190	Meats, fresh, chilled, or frozen, not elsewhere classified
61 1200	Meat, Cured
61 1210	Beef, corned, pickled or cured
61 1220	Beef, dried or dehydrated
61 1230	Pork, pickled or salted, unsmoked
61 1231	Hams and shoulders
61 1232	Bacon
61 1233	Wiltshire sides
61 1239	Pork, pickled or salted, unsmoked, not elsewhere classified
61 1240	Pork, pickled or salted, smoked
61 1241	Hams and shoulders
61 1242	Bacon
61 1249	Pork, pickled or salted, smoked, not elsewhere classified
61 1250	Pork, dried or dehydrated
61 1260	Horse meat
61 1290	Meat, cured, not elsewhere classified
61 1300	Meat, Canned
61 1310	Pork products
61 1311	Luncheon meat
61 1312	Ham
61 1313	Bacon
61 1314	Sausage
	61 13141 Sausage in casings
	61 13142 Sausage in bulk
61 1315	Ham, chopped
61 1316	Ham spread
61 1317	Ham, spiced
61 1318	Scrapple
61 1319	Pork products, not elsewhere classified
61 1320	Beef products
61 1321	Corned beef
61 1322	Corned beef hash
61 1323	Roast beef
61 1324	Beef stew
61 1329	Beef products, not elsewhere classified
61 1330	Brains
61 1340	Corned mutton
61 1350	Sausage, except pork
61 1360	Meat spreads, except pork
61 1361	Liver spread
61 1362	Meat spreads, except pork and liver
61 1370	Meat preparations
61 1371	Chile con carne
61 1372	Hot tamales
61 1373	Luncheon meat, except pork
61 1374	Potted meat
61 1375	Tongue (beef, pork, lamb)
61 1376	Tripe

FOOD, MANUFACTURED - Continued**MEAT PRODUCTS - Continued****Meat, Canned - Continued**

- 61 1377 Tushonka (Russian)
- 61 1379 Meat preparations, not elsewhere classified
- 61 1380 Rations
- 61 1381 Lend-Lease Ration O. O. (Beef)
- 61 1382 Lend-Lease Ration R. R. (Beef, Pork, Vegetables)
- 61 1383 Lend-Lease Ration X. X. (Pork)
- 61 1384 Ration "C" (Meat and Beans; Meat and Vegetable Hash; Meat and Vegetable Stew)
- 61 1385 Ration "K" (Ham and Egg; Pork and Veal; Corned Pork)
- 61 1389 Rations, not elsewhere classified

Sausage, Not Canned

- 61 1410 Fresh sausage
- 61 1420 Frankfurters, bologna, and similar cased products
- 61 1430 Dry sausage
- 61 1490 Sausage, not canned, not elsewhere classified

Meat Preparations, Not Canned

- 61 1510 Meat loaves
- 61 1520 Head cheese and scrapple
- 61 1590 Meat preparations, not canned, not elsewhere classified

Poultry, Dressed; Fresh and Frozen

- 61 1610 Chickens
- 61 1611 Fryers and broilers
- 61 1612 Roasters and stewers
- 61 1613 Fowls
- 61 1614 Cocks
- 61 1620 Turkeys
- 61 1630 Ducks
- 61 1640 Geese
- 61 1650 Guineas
- 61 1690 Poultry, dressed; fresh and frozen, not elsewhere classified

Poultry, Prepared or Preserved, Except Frozen

- 61 1710 Not canned
- 61 1720 Canned poultry
- 61 1721 Boned chicken
- 61 1722 Deviled or potted chicken
- 61 1723 Boned turkey
- 61 1729 Canned poultry, not elsewhere classified
- 61 1790 Poultry, prepared or preserved, except frozen, not elsewhere classified

Venison, Reindeer, Rabbits, and Other Game**Miscellaneous Meat Products**

- 61 1910 Meat extract
- 61 1920 Meat pastes (include liver paste)
- 61 1990 Meat products, not elsewhere classified

DAIRY PRODUCTS**Milk, Cream, and Buttermilk, Fresh (Fluid Market)**

- 61 2110 Milk, cow
- 61 2111 Whole milk
 - 61 2111100 Bulk goods
 - 61 2111200 Bottled goods
 - 61 2111220 Pasteurized
 - 61 2111221 Homogenized
 - 61 2111222 Not homogenized
 - 61 2111230 Raw

- 61 2112 Skim milk
 - 61 2112100 Bulk goods
 - 61 2112200 Bottled goods

- 61 2120 Milk, goat
 - 61 2120100 Bulk goods
 - 61 2120200 Bottled goods

Cream

- 61 2131 Containing less than 30 percent butterfat
 - 61 2131100 Bulk goods
 - 61 2131110 Pasteurized

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

Harold D. Smith, Director

Standard Industrial Classification Manual

VOLUME I Manufacturing Industries

PART 1 Titles and Descriptions of Industries

Prepared by

THE TECHNICAL COMMITTEE
ON INDUSTRIAL CLASSIFICATION
DIVISION OF STATISTICAL
STANDARDS

November 1945

Foreword

The Standard Industrial Classification Manual is intended primarily as an aid in securing uniformity and comparability in the presentation of statistical data collected by various agencies of the United States Government. State agencies, trade associations, and private research agencies.

Previous to the preparation of a standard industrial classification, the various agencies collecting industrial data used their own industrial classifications, and thus a given establishment might have been classified in one industry by one agency and in another by a second agency. The value of industrial data for purposes of analysis and information is increased by the use of a standard system for the classification and assembling of data collected by various agencies. For example, production information collected by one agency can be more readily compared with employment information collected by another if both agencies conform to the standard definition of the industry involved.

Earlier issues of this classification for both manufacturing and non-manufacturing industries were prepared by the Technical Committee on Industrial Classification, assisted by a number of special committees of experts in various fields of business. The work of the Technical Committee was formerly carried on under the general supervision of the Committee on Industrial Classification, which was sponsored in its earlier stages by the Central Statistical Board and later by the Division of Statistical Standards of the Bureau of the Budget, Executive Office of the President.

This manual presents a revision of the industrial classification for the Manufacturing Industries Division, which has been prepared by the Technical Committee on Industrial Classification and the Committee on Manufacturing Industries working under the sponsorship of the Division of Statistical Standards.

In this revision a number of changes suggested by the users of the classification and the consumers of industry data have been incorporated. Among the more important changes in the classification are (a) a rearrangement of the textile industries, (b) the establishment of a new major group for furniture and fixtures, (c) an extensive revision of the chemical industries, (d) a basic rearrangement of the metal industries so as to provide one major group for primary metal industries, (e) the inclusion of the motor vehicle industries, formerly a separate major

group, in the Major Group "Transportation Equipment", and (f) the establishment of a new major group for Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks.

In preparing the classification, the Technical Committee has been guided by the following general principles:

(1) The classification should conform to the existing structure of American industry.

(2) The reporting units to be classified are establishments,¹ rather than legal entities or companies.

(3) Each establishment is to be classified according to its major activity.

(4) To be recognized as an industry, each group of establishments must have significance from the standpoint of the number of establishments, number of wage earners, volume of business, employment and payroll fluctuations, and other important economic features.

The classification undertakes to cover the entire field of economic activities: Agriculture, forestry, and fisheries; mining; construction; manufacturing; wholesale and retail trade; finance, insurance, and real estate; transportation, communication, and other public utilities; and services.

Volume I, part 1 provides the title and descriptions of the manufacturing industries. Volume I, part 2 is an alphabetic index identifying the principal products or processes which would be reported by establishments, and a few special types of establishments, with the appropriate manufacturing industry code numbers. Volume II contains a similar classification for nonmanufacturing industries, with descriptions of the industries and an alphabetic index of products, establishments, and services.

In the preparation of this revision special acknowledgment is made of the contribution made by (1) Mr. Maxwell R. Conklin, Chief, Industry Division, Bureau of the Census; Mr. H. B. McCoy, Chief, Division of Industrial Economy, Bureau of Foreign and Domestic Commerce; Mr. Louis S. Ballif, Chief, Technical Services, U. S. Tariff Commission; and the commodity and industry specialists on their staffs who gave valuable advice and suggestions during the development of this revision, (2) the many chairmen and members of the committees of experts on Standard Commodity Classification who advised the Committee on Manufacturing Industries with respect to the various commodities and industries in which they had special interest, (3) The State Employment Security Agencies which submitted helpful suggestions and criticisms on tentative drafts of the revised classification, (4) the Bureau of Old Age and Survivors Insurance of the Social Security Board in lending the services of Mr. William H. Cummins to the committee for three months to write

¹ For definition of an establishment, see page 3.

FOREWORD

v

descriptions of industries, and (5) the Bureau of the Census, U. S. Department of Commerce, in assuming the costs of printing this publication.

In addition to the above, the committee wishes to acknowledge the very valuable assistance received from a subcommittee of the Industry Advisory Committee on Government Questionnaires consisting of Mr. Thomas M. Brennan, Executive Director, National Industrial Council; Mr. Henry P. Fowler, Manager, Trade Association Department, Chamber of Commerce of the United States; and Mr. Earl Constantine, President, National Association of Hosiery Manufacturers; who, in addition to making valuable suggestions and criticisms on the classification, arranged for the clearance of the classification with many individual manufacturers and trade associations. Finally, the committee wishes to express appreciation for the many constructive criticisms and suggestions received from Federal agencies, trade associations, trade unions, special research organizations and business executives.

Major Group 20.—FOOD AND KINDRED PRODUCTS**THE MAJOR GROUP AS A WHOLE**

This major group includes establishments manufacturing foods and beverages for human consumption, and certain related products such as manufactured ice, chewing gum, and prepared feeds for animals and fowls.

Group Industry
No. No.

201 MEAT PRODUCTS**2011 Meat packing, wholesale**

Establishments primarily engaged in the slaughtering, for their own account, of cattle, hogs, sheep, lambs, calves, and other animals, for meat to be sold fresh or to be used on the same premises in canning and curing, and in making sausage, lard, and other products. Important products of this industry include fresh meat (beef, veal, mutton, lamb, and pork); cured beef and pork; canned beef, pork, and other meat goods; sausage and lard. Establishments primarily engaged in slaughtering animals on a contract basis for the trade are classified in Industry 2012; establishments manufacturing sausages and meat specialties from purchased meats in Industry 2013; and establishments killing, dressing, packing, and canning poultry, rabbits, and other small game in Industry 2015.

2012 Custom slaughtering, wholesale

Establishments primarily engaged in slaughtering cattle, hogs, sheep, lambs, calves, and other animals on a contract basis for the trade. Hides and other byproducts may be retained in partial payment for this service, and may be reported as the principal products of such establishments.

2013 Sausages and other prepared meat products

Establishments primarily engaged in manufacturing sausages, prepared meats, and meat specialties, but performing no slaughtering operations on the premises. Sausage or meat kitchens operated by packing houses as separate establishments are also included in this industry. Establishments primarily engaged in killing, dressing, packing, and canning poultry, rabbits, and other small game are classified in Industry 2015.

2014 Sausage casings

Establishments primarily engaged in manufacturing sausage casings from animal or synthetic materials.

2015 Poultry and small game dressing and packing, wholesale

Establishments primarily engaged in killing, dressing, packing, and canning poultry, rabbits, and other small game for the trade. Important products of this industry include dressed and packed poultry (chickens, turkeys, ducks, and geese); canned poultry (whole and parts); potted and deviled chicken; dressed rabbits and dressed hares.

202**DAIRY PRODUCTS**

This group includes establishments primarily engaged in manufacturing creamery butter, natural cheese, condensed and evaporated milk, ice cream and ices, and special dairy products such as processed and lactic butter, processed cheese, and malted milk, but which are not engaged in the distribution of fluid milk or cream. Establishments which manufacture dairy products and are also engaged in the distribution of fluid milk or cream are classified in trade industries.

EXHIBIT "15"

United States of America

Executive Office of the President

Bureau of the Budget

STANDARD COMMODITY CLASSIFICATION

Volume I

Standard Classified
List of Commodities

Prepared by the Technical Committee
On Standard Commodity Classification

December 1946

MAJOR GROUP 70. — FOOD, MANUFACTURED

70 00 FOOD, MANUFACTURED

70 10	Meat (Including Poultry and Game), Fresh, Chilled, or Frozen
70 11	Beef, Except Trimings
70 12	Veal, Except Trimings
70 13	Lamb, Except Trimings
70 14	Mutton, Except Trimings
70 15	Pork, Except Trimings
70 16	Goat and Kid Meat
70 17	Horse Meat
70 18	Poultry
70 19	Miscellaneous Meats, Fresh, Chilled, Or Frozen (Include Game, Meat Trimings, and Variety Items Such as Knuckles, Feet, and Organs)
70 20	Meat Products
70 21	Cured Beef (Pickled, Corned, Smoked, or Dried)
70 22	Cured Veal (Pickled, Corned, Smoked, or Dried)
70 23	Cured Lamb and Mutton (Pickled, Corned, Smoked, or Dried)
70 24	Cured Pork (Pickled, Corned, Smoked, or Dried)
70 25	Cured Poultry (Pickled, Corned, Smoked, or Dried)
70 26	Canned Meat and Meat Products *
70 27	Sausage (Not Canned)
70 28	Meat Preparations and Mixtures, Except Sausage and Soup
70 29	Miscellaneous Meat Products
70 30	Dairy Products
70 31	Milk, Cream and Buttermilk, Fluid Market
70 32	Milk and Buttermilk, Evaporated and Condensed
70 33	Milk, Cream, and Buttermilk, Dried (For Human Consumption Only)
70 34	Butter
70 35	Cheese, Natural
70 36	Cheese Products and Cheese-like Preparations
70 37	Ice Cream and Other Frozen Desserts, Including Dairy-base Mixes
70 39	Miscellaneous Dairy Products
70 40	Fish and Shellfish, Prepared or Preserved
70 41	Fresh or Frozen Fish and Fish Products
70 42	Fresh or Frozen Shellfish and Shellfish Meats
70 43	Dried and Unsalted Fish and Shellfish

* In this Major Group, the term "Canned" means hermetically sealed in tin, glass, or other containers.

COMPARISON OF COMMODITY CLASSIFICATIONS SHOWN DURING 1949 THROUGH 1952 IN SCHEDULE B.
 "STATISTICAL CLASSIFICATION OF DOMESTIC AND FOREIGN COMMODITIES EXPORTED
 FROM THE UNITED STATES"

GROUP 00.—ANIMALS AND ANIMAL PRODUCTS, EDIBLE

Commodity Description	Ec. Cl.	Unit Qty.	Schedule B Commodity Number			
			1952	1951	1950	1949
ANIMALS, EDIBLE						
Cattle for breeding.....	2	No.	001000	001000	001000	001000
Other cattle.....	2	No.	001200	001200	001200	001200
Hogs (swine).....	2	No.	001300	001300	001300	001300
Sheep.....	2	No.	001600	001600	001600	001600
				001900	001900	001900
Baby chicks.....	2	No.	001910	}		
Poultry, live, n.e.c.....	2	Lb.	001990			
MEAT AND MEAT PRODUCTS						
Beef and veal, except canned:						
Fresh or frozen.....	4	Lb.	002000	002000	002000	002000
Pickled or cured.....	4	Lb.	002100	002100	002100	002100
Horse meat (all kinds).....	4	Lb.	002200	002200	002200	002200
Pork, except canned:						
Fresh or frozen.....	4	Lb.	002700	002700	002700	002700
Hams and shoulders, cured or cooked.....	4	Lb.	002800	002800	002800	002800
Bacon.....	4	Lb.	002900	002900	002900	002900
				003000	003000	003000
				003200	003200	003200
Other pork, pickled, slated, or otherwise cured.....	4	Lb.	003250	(004400)		
Lamb and mutton, except canned.....	4	Lb.	003400		003400	003400
Sausage, prepared sausage meats, bologna, and frankfurters, except canned.....	4	Lb.	003500	003500	003500	003500
				003600	003600	003600
Beef and veal canned.....	4	Lb.	003620	(003909)		
					003700	003700
Hams and shoulders, canned.....	4	Lb.	003710	}		
Other pork, canned.....	4	Lb.	003790			
Sausage, prepared sausage meats, bologna and frankfurters, canned.....	4	Lb.	003800	003800	003800	003800
Chicken, canned.....	4	Lb.	003901	003901	003901	003901
Canned baby food, meat, or chief value meat, strained or chopped (including soups).....	4	Lb.	003905	(003908) (124500)	003908	003908
Meat and meat products, canned, n.e.c.....	4	Lb.	003909	003909	003909	003909
				004000	004000	004000
Chickens, capons, fresh or frozen.....	4	Lb.	004010	}		
Other poultry and game, fresh or frozen.....	4	Lb.	004050			
				004100	004100	004100
				004300	004300	004300
			(004500)	}		
			(003250)			
				004400	004400	004400
				(004100)		
				(004300)		
Other meats, except canned.....	4	Lb.	004500	004500	004500	004500
Sausage casings, natural, bladders, bungs, middles, rounds, or veasands:						
Hog.....	4	Lb.	004600	004600	004600	004600
Other.....	4	Lb.	004800	004800	004800	004800
Sausage casings, artificial.....	9	Lb.	004998	004998	004998	004998
Oleo oil.....	4	Lb.	005000	005000	005000	005000
Oleo stock.....	4	Lb.	005100	005100	005100	005100
Tallow, edible.....	4	Lb.	005200	005200	005200	005200
Lard (including rendered pork fat).....	4	Lb.	005300	005300	005300	005300
Shortening, chief weight animal fat, except lard.....	4	Lb.	005500	(144700)		
Oleo stearin.....	4	Lb.	005600	005600	005600	005600

For numbered footnotes see page 1.

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EXHIBIT 17

Industrial Classification Code

Part IV

The Manufacturing Groups

A Reference Guide

November 15, 1936.

Bureau of Research and Statistics
 Division of Placement and Unemployment Insurance
 Department of Labor, State of New York

[fol. 76]

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Manufacturing

Group 20—Food Products.

This group covers the manufacture of foods and the manufacture of by-products from food sources. Baking powder, yeast, and other leavening products are listed in this group (Group 20) rather than in Group 28 (chemical products). Also included are bottling, canning, or packaging of foods such as grains, cereals, sea-foods, fruit, and vegetables, including the manufacture and bottling of soft drinks and spiritous liquors.

The ruling on bakeries is as follows. Those employers who report "wholesale bakery" are coded as manufacturers, and are listed in Group 20; also included in this group are those who report "wholesale and retail bakery" and those who report only "bakery" and who have ten or more employees; those reporting as "retail bakery" or as "bakery" (not more specifically described) with less than ten employees are coded in Retail Food (Group 54).

The manufacture of fertilizer from the by-products of slaughter houses and other food-packing plants is included in Group 20. Fertilizers as such, when the product is of a chemical nature, are coded in the chemical group (Group 28).

In view of the many non-edible materials made from products such as cotton-seed oil, peanut oil, etc., these oils are included in Group 28 rather than in the food manufacturing group. Only the manufacture of salad oil or of vegetable cooking oil, specifically so described, is included in Group 20.

[fol. 78] Parts II and III. Whereas Parts II and III have been devised specifically for use in the routine work of coding the initial Statements or "status reports" of employers, Parts IV and V are intended to provide a background for classifying types of business not previously indexed and for breaking down the major groups into sub-classifications.

[fol. 79]

U. S. Census No.	Product
	Meal, corn and other grains
113	Meal, corn-oil
	Meal, fish
117	Meal, peanut
123	Meat, canned; cured; pickled; smoked; spiced
	Meat packing
117	Meat products
	Meat puddings
116	Middlings (by-product of flour or grain mill)
	Milk acidophilus
111	Milk, condensed; evaporated; powdered
117	Milk, malted
111	Milk, sugar of
109	Milk chocolate, plain or with nuts
116	Milling, grain
117	Mincemeat
	Mineral-water bottling
130	Molasses
105	Mustard, prepared
101	Near beer
101	Nonalcoholic beverages
121	Noodles
112	Nuts, processed (food)
	Oils—See particular kind of oil

[fol. 80]

105	Pork and beans, canned
123	Pork products
117	Potato chips
113	Potato starch
126	Poultry dressing, killing, packing (for the wholesale trade)
114	Poultry feeds
109	Powdered cocoa, sweetened; unsweetened
111	Powdered cream and milk
603	Powders, baking
117	Powders, dessert: prepared
117	Powders, drink
115	Powders, flavoring
	Preserved food
102	Pretzels
	Puddings
	Raisins
121	Ravioli
136	Rectified liquors
131	Refined cane sugar
	Relishes
	Rendered, fat
117	Rice cakes
127	Rice cleaning and polishing
	Rolls (bakery product)—See "Bakery products"

INDUSTRIAL CLASSIFICATION CODE

For Use in Connection With
Federal Old-Age Benefits
and
Unemployment Compensation

PART IV

THE MANUFACTURING GROUPS

Washington, D. C.

July 1, 1937

Social Security Board

Bureau of Research and Statistics
Bureau of Federal Old-Age Benefits
Bureau of Unemployment Compensation

Introduction

This volume is Part IV of the Industrial Classification Code which has been developed by the Social Security Board for use in the industrial classification of employers covered by the state unemployment compensation laws and the Federal Old-Age Benefits program.

The Code materials thus far developed are divided into five parts, as follows:

Part I. List of Major Groups.

Part II. Manufacturing Index (alphabetical list for coders).

Part III. Non-Manufacturing Index (alphabetical list for coders).

Part IV. The Manufacturing Groups.

Part V. The Non-Manufacturing Groups.

Part IV covers the manufacturing industries and indicates the scope and content of the major manufacturing groups. It is a rearrangement of the items in Part II and

attempts to present a complete, unduplicated list of products (and in some cases industries) contained in each major group.

Part IV is *NOT* to be used by coders in assigning industrial classification numbers.

[fol. 83]

Group 20.

Meat, canned; cured; pickled; smoked; spiced; frozen.

Meat packing.

Meat products.

Meat puddings.

Middling (by-product of flour or grain mill).

Milk, condensed; evaporated; powdered.

Milk, sugar of.

Milk chocolate; plain or with nuts.

Milling, grain.

Mincemeat.

Molasses.

Mustard, prepared.

"Near Beer."

Nonalcoholic beverages.

Noodles.

Oleo oil and stock.

Oleomargarine.

Olive oil.

Olives.

Orange marmalade.

Orange peel, glazed.

Oriental food.

Oysters, canned; preserved.

Pan work (candy).

Pancake syrup.

Pastrami.

Peanut butter.

Peel, fruit (glazed, etc.).

[fol. 84] Pickled food products.

Pickles.

Plum pudding.

Popcorn balls and other popcorn products.

Pork and beans, canned.

Pork products.

Potato chips.

Potato starch.

Poultry feeds.

Poultry killing, dressing, packing (for the wholesale trade).

Powdered cocoa, sweetened; unsweetened.

Powders, dessert; prepared.

Powders, drink.

Pretzels.

Puddings.

Raisins.

Ravioli.

Refining, cane sugar.

Relishes.

Rice cleaning and polishing.

Root starch.

Rye flour.

Rye malt.

Salad oils.

Salmon, canned.

Sardines, canned.

Sauces.

Sauerkraut.

(Here follow 3 photos, folios 85-87)

EXHIBIT "19"

146A

UNITED STATES DEPARTMENT OF LABOR

FRANCES PERKINS, Secretary

UNITED STATES EMPLOYMENT SERVICE

W. FRANK PERSONS, Director

INDUSTRIAL CLASSIFICATIONS AND CODES

FOR USE IN

PUBLIC EMPLOYMENT OFFICES

JULY 1938



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1935

SECTION I

SUMMARY OF INDUSTRIAL GROUPS

- 01 Agriculture, Forestry, and Fishing
- 02 Extraction of Minerals
- 03 Building and Construction, Private
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- Manufacturing Industries:
 - 05 Chemicals
 - 06 Clay, Stone, and Glass Products
 - 07 Food
 - 08 Iron and Steel and their Products, not including machinery
 - 09 Leather and its Products
 - 10 Forest Products: Lumber
 - 11 Machinery, not including transportation equipment
 - 12 Nonferrous Metals and their Products
 - 13 Paper and Allied Products
 - 14 Products of Petroleum and Coal
 - 15 Printing, Publishing, and Allied Industries
 - 16 Railroad Repair Shops
 - 17 Rubber Products
 - 18 Textiles and their Products
 - 19 Transportation Equipment: Air, Land, and Water
 - 20 Miscellaneous Manufacturing Industries
- 21 Commercial and Mechanical Services and Finance
- 22 Wholesale Distribution
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- 26 Hotels, Restaurants, Amusements, etc.
- 27 Governmental Service
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- 29 Public Utilities, except transportation and communication
- 30 Transportation and Communication
- 32 Recent Students
- 33 Persons not Ordinarily Employed
- 40-42 Industrial Codes for Reporting Work Project Placements

FOOD (0700-0799)

U. S. E. S. Code	Social Security Code	U. S. E. S. Code	Social Security Code
0702 Beverages, nonalcoholic (Does not include tomato, cranberry, and kraut juices, etc.—see 0734.)	90	0716 Liquors, vinous	90
0703 Bread and other bakery products (Does not include small bakeries selling at retail on the premises—see 2309.)	90	0719 Macaroni, spaghetti, vermicelli, and noodles	90
0704 Butter, cheese, and milk products	90	0720 Malt	90
0706 Cereal preparations (Does not include establishments princi- pally engaged in milling of ordinary flour and meal—see 0714, or prepared animal feeds—see 0712.)	90	0721 Meat packing—wholesale Includes lard rendering, slaughter houses, etc. (Does not include establish- ments engaged primarily in manufacture of other types of shortening—see 0727, or in secondary manufacture of sausage and allied products—see 0728, or margar- ines—0722.)	90
0707 Chewing gum	90	0722 Oleomargarine and other margarines (Does not include such products made in meat-packing establishments—see 0721.)	90
0708 Chocolate and cocoa products Includes all products of the nut of the cocoa tree. (Does not include confection- ery—see 0710.)	90	0724 Poultry: killing, dressing, and pack- ing—wholesale	90
0710 Confectionery (Does not include solid chocolate bars for cooking—see 0708, or small confection- ery shops selling at retail on the prem- ises—see 2302.)	90	0725 Rice cleaning and polishing	90
0711 Corn sirup, corn sugar, corn oil, and starches Includes all starches, regardless of source. (Does not include corn flakes, hominy, etc.—see 0706.)	90	0726 Sausage, meat puddings, headcheese etc. (Does not include such products made by slaughter houses—see 0721.)	90
0712 Feeds for animals and fowl (prepared)	90	0727 Shortenings, vegetable cooking oils, salad oils (Does not include lard—see 0721.)	90
0713 Flavoring compounds Includes coloring for bakers, confec- tioners, and crushed fruit.	90	0728 Sugar (Does not include corn sugar—see 0711.)	90
0714 Flour and meal (Does not include prepared animal feeds—see 0712, and cereal preparations and self-rising flours—see 0706.)	90	0729 Vinegar and cider	90
0715 Food preparations, n. a. c. Includes meat products such as, bone- less ham, peanut butter, potato chips, malted milk, mince meat, prepared pud- dings, ice-cream cones, gelatines, oyster- shucking establishments, etc.	90	0731 Liquors, distilled	90
0716 Ice cream	90	0732 Liquors, malt	90
0717 Ice, manufactured	90	0733 Sea food, canned and preserved (Does not include oyster-shucking estab- lishments—see 0715.)	90
		0734 Fruits and vegetables, canned and dried Includes canning and preserving of jellies, pickles, sauces, dressings, juices, etc., and other fruits and vegetables	90
		0735 Baking powder, yeast, and other leaven- ing compounds	90

[fol. 88]

EXHIBIT 20

Excerpt from "Beef, Veal and Lamb Operations"

"MARKETING METHODS"

"Marketing of livestock is an important step in the production of beef for consumption, particularly to the producer. Marketing comprises all services which have to be performed in order to make raw products salable. With the exception of the large producer or feeder, production of livestock is in such a limited volume on most farms that selling and processing of the products cannot be performed economically at the places where the stock is raised. It is necessary that the livestock of a great many farms be assembled at one point to make economical transportation to the central market or to make marketing possible. Thus most livestock are assembled, the assembling falling into two different parts, first, the transportation to shipping point and, second, railroad shipping. Generally the central markets are the final assembling points for livestock. Transportation of livestock from the farm to shipping point, or directly to a nearby market, is performed by the farmer or feeder who has the animals for sale. In some sections the local livestock buyer or speculator buys the livestock from the producer, assembles it, and ships it to the market. In other cases a group of farmers form a cooperative shipping association, assemble at a given point, and forward their livestock on to the ultimate market. Other producers who raise enough livestock ship to market in full cars; and these are the shippers who are most generally found at the terminal markets with their stock.

"Transportation of livestock by rail takes place in specially built cars owned by the railroads. Railroads maintain special departments for handling their livestock business, with agents who are personally and intimately familiar with the livestock production in their territories. Railroads also maintain at various points along their lines of road feed yards where, as required by law, livestock may be rested and fed at least every twenty-eight hours. The twenty-eight hour law holds except for the last haul, which may be extended to thirty-six hours. Freight rates are con-

trolled by the Interstate Commerce Commission and are subject to revision from time to time. This commission has established minimum weights to insure the efficient use of livestock cars and protect carriers against loss from cars not being loaded to capacity. Overcrowding is also guarded against by railroads to avoid serious damage due to bruising and loss from animals dying in transit.

Stock Yard Method

"Much of the livestock of this country is sold by producers at the public livestock markets, of which approximately sixty-seven are officially recognized by the United States Department of Agriculture. At these markets there are to be found all of the organizations and facilities necessary for livestock trade, such as stock yard companies, transportation companies, livestock commission firms, meat packing plants, livestock buyers, speculators, banks, and market publications. The stock yard company owns the stock yards and equipment for unloading, sheltering, and handling livestock; also feeding and water facilities. Charges are made by the stock yard company for the services rendered and for the feed furnished.

"Usually the transportation company at the market owns the switch tracks which bring the carloads of stock from the main railroad to the unloading chutes of the stock yard company.

[fol. 89] "Commission companies organize into livestock exchanges and act as the representative of the producer on the open market. Consignments of livestock are made to the various commission firms by the producers. The commission firm then acts as the seller for the owner. These commission firms are on the market every day and have certain space allotted to them by the stock yard company. Commission firms maintain salesmen who in most cases are specialists on certain classes of livestock and develop a high degree of efficiency. Of course, the owner of livestock may offer his product for sale himself; but most producers choose to sell their livestock through some commission company, a service for which a charge is made.

"The meat packer, being the buyer of livestock, maintains in the stock yards a buying organization which pur-

chases from the commission men on the open competitive market the livestock needed for the day's kill. At the big markets, beside the buyers for the local and national meat packing companies, there are also to be found order buyers, who purchase mostly for eastern packers and ship the livestock to the seaboard for slaughter. Then there are traders and speculators who buy and sell within the market, usually purchasing mixed carloads which can be sorted and made up into new loads of uniform grades. In some places there are farmers' cooperative societies which handle the sales for their members.

"Trading on the open livestock market is for cash. Stock yard banks provide facilities for transactions between commission men or producers and the meat packers, order buyers, and speculators, which enable the shipper to carry cash home with him or to obtain transfers of credit to his local bank at home.

"When livestock are unloaded from the main railroad lines into the stock yards, they are received by employees of the stock yard company who take over the responsibility at that point for the stock. The animals are then driven to the pens of the commission firm in the yards and released to the charge of the commission firm to which they are consigned. The commission man then orders the feed for the stock, feeds and waters the stock, and then offers them for sale. The customary practice is for only one buyer at a time to negotiate with the salesman for the commission man. The deal is usually completed by word of mouth or by a nod of the head, no written contract being prepared. This greatly facilitates trading. Bidding is done by the buyer on the 100 pounds live weight basis.

"Immediately after purchase by the packer or other buyer the stock is driven to the scale houses operated by the stock yard company and weighed (Figure 2). Meat packers have a man at the scales to check weights. The weight ticket has one original and three copies. The stock yard company keeps the original, the commission firm receives one copy, the shipper, one and the buyer, one. These tickets are stamped with the weight, number of head and the names of the commission firm, buyer and weight master.

"Outside the scale there is a counter-off who counts the

cattle as they come off the scale. He is also employed by the stock yard company, which has men to yard the cattle. When the cattle are yarded, the counter-off gives the buyer a receipt showing how many cattle are yarded in a certain pen, under lock and key.

[fol. 90] "After the stock have been yarded, the responsibility of the commission man ends and the livestock are the property of the packer. All packers have drivers to drive the cattle to the meat packing plant. The driver gets the yardage ticket and gives it to the keyman at the scale house, who delivers the cattle to the representative of the meat packer and counts the cattle out to make sure that they correspond with the number on the yardage ticket. The meat packer drives them to his own pens, where he can keep them until he is ready to slaughter or transport them out of the market.

Direct Marketing

"There are some packers who have their own buyers in the country. These buyers deal directly with the farmer and then arrange all the details of shipment to the meat packing plant. Such meat packers also buy considerable stock by telephone to the farmers and in some cases, they even maintain their own private stock yards and arrange for cattle to be shipped direct to these yards. Cattle and sheep are often bought by the meat packer and held at his own yards where they are fed to greater weights and a higher finish than they carried on arrival. Feeding of cattle and sheep by the meat packer is usually done to provide the finish and quality needed to supply his trade at times when such quality and finish cannot be had direct from the grower.

"Direct buying is common practice in sections where the meat packer is not located in a central market but instead is located in a livestock producing area. Much of the livestock sold direct to the packer is shipped to him in trucks."

Table 16.--Livestock: Federally inspected slaughter, by months and seasons, and total slaughter, yearly, in the United States, 1935-51

CATTLE

Year	Federally inspected slaughter 2/												Total 3/				
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.- Mar.	Apr.- June	July- Sept.	Oct.- Dec.	Jan.- Dec.
	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.
1935 1/4/...	814	641	686	684	735	669	745	875	886	1,083	956	592	2,141	2,088	2,506	2,931	9,666
1936 1/4/...	906	742	763	812	786	853	928	1,012	1,071	1,124	988	987	2,411	2,451	3,011	3,099	10,972
1937.....	867	708	825	802	745	840	790	880	939	958	856	859	2,400	2,387	2,609	2,673	10,070
1938.....	839	716	809	749	772	816	820	848	917	884	858	758	2,355	2,337	2,585	2,580	9,776
1939.....	851	653	774	677	814	778	782	823	880	893	837	773	2,188	2,269	2,485	2,503	9,446
1940.....	827	715	721	774	796	738	822	842	812	969	884	858	2,263	2,308	2,476	2,710	9,756
1941.....	891	717	766	792	908	867	968	968	1,004	1,119	941	1,004	2,375	2,567	2,940	3,064	10,946
1942.....	1,057	891	929	956	885	1,039	1,048	1,103	1,159	1,280	1,018	982	2,877	2,881	3,309	3,280	12,347
1943.....	928	854	923	796	774	708	845	988	1,146	1,275	1,290	1,201	2,704	2,279	2,979	3,765	11,727
1944.....	1,141	1,043	1,057	939	989	1,003	1,079	1,339	1,310	1,451	1,336	1,275	3,241	2,931	3,728	4,062	13,950
1945.....	1,284	1,149	1,213	979	1,045	1,060	1,050	1,292	1,358	1,584	1,408	1,118	3,946	3,064	3,700	4,110	14,538
1946.....	1,012	1,015	904	715	676	451	1,239	1,240	360	1,103	1,348	1,352	2,931	1,842	2,839	3,803	11,413
1947.....	1,403	1,143	1,228	1,203	1,264	1,207	1,274	1,217	1,407	1,497	1,337	1,346	3,774	3,674	3,898	4,180	15,524
1948.....	1,312	977	986	899	877	1,109	1,046	1,086	1,178	1,176	1,151	1,197	3,275	2,885	3,310	3,524	12,994
1949.....	1,126	994	1,102	996	1,025	1,095	1,090	1,232	1,224	1,156	1,116	1,064	3,222	3,116	3,946	3,336	13,222
1950.....	1,103	939	1,082	959	1,075	1,066	1,070	1,184	1,196	1,169	1,151	1,110	3,124	3,100	3,450	3,430	13,103
1951.....	1,160	887	965	894	986	787	920	1,064	956	1,140	1,122	998	3,012	2,667	2,940	3,260	11,879

CALVES

Year	Federally inspected slaughter 2/												Total 3/				
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.- Mar.	Apr.- June	July- Sept.	Oct.- Dec.	Jan.- Dec.
	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.
1935 1/4/...	476	387	471	512	508	439	464	472	458	531	480	481	1,334	1,459	1,394	1,492	2,793
1936 1/4/...	465	405	483	525	503	517	523	541	553	585	477	494	1,353	1,544	1,617	1,556	2,897
1937.....	484	437	592	588	561	579	520	538	537	525	468	452	1,513	1,728	1,595	1,445	3,241
1938.....	420	398	506	502	500	475	436	457	453	470	457	417	1,324	1,477	1,346	1,344	2,801
1939.....	415	385	478	457	509	448	417	414	427	482	450	381	1,278	1,414	1,258	1,313	2,692
1940.....	416	378	440	480	501	437	457	432	412	507	462	437	1,234	1,418	1,301	1,406	2,652
1941.....	411	384	444	507	501	440	445	414	447	536	476	457	1,239	1,448	1,306	1,468	2,687
1942.....	440	392	491	502	471	475	461	460	513	578	501	476	1,323	1,448	1,434	1,555	2,770
1943.....	340	331	410	365	328	327	335	434	532	655	625	529	1,081	1,019	1,301	1,808	2,100
1944.....	468	441	565	555	541	594	634	756	753	920	874	669	1,474	1,690	2,143	2,463	3,164
1945.....	560	442	575	477	522	486	482	603	666	877	783	548	1,577	1,485	1,751	2,208	3,062
1946.....	440	427	484	445	402	306	542	534	364	651	656	591	1,351	1,153	1,440	1,898	2,504
1947.....	591	521	644	678	627	621	656	628	719	813	762	673	1,756	1,926	2,073	2,248	3,682
1948.....	586	511	566	550	509	620	577	569	599	633	614	572	1,663	1,679	1,745	1,819	3,342
1949.....	484	476	619	562	510	533	501	549	552	568	585	511	1,579	1,605	1,602	1,664	3,184
1950.....	465	443	586	494	496	485	443	484	488	515	505	445	1,494	1,475	1,415	1,465	2,969
1951.....	433	374	447	406	414	406	408	422	373	500	457	344	1,254	1,226	1,203	1,301	2,480

See footnotes at end of table.

Table 16.—Livestock: Federally inspected slaughter, by months and seasons, and total slaughter, yearly, in the United States, 1935-51^{1/} - Continued

HOGS

Year	Calendar year basis													Crop year beginning Oct. 1	Crop					Total slaughter		
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.- Dec.		Oct.- Dec.	Jan.- Mar.	Oct.- Apr. Spring pig crop	Apr.- June	July- Sept.	May- Sept. Fall oig crop	Oct.- Sept. Crop year	Jan.- Dec.
Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.		
1935....	3,048	2,409	2,158	2,178	2,172	1,828	1,712	1,668	1,453	2,135	2,422	2,875	26,057	1934-35...	12,054	7,615	21,847	6,178	4,833	8,833	30,680	46,011
1936....	3,428	2,319	2,617	2,559	2,579	2,739	2,692	2,254	2,403	3,492	4,292	4,681	36,055	1935-36...	7,432	8,364	18,355	7,877	7,349	12,667	31,022	58,730
1937....	3,519	2,842	3,033	2,810	2,099	2,110	1,843	1,590	2,033	2,711	3,295	3,958	31,642	1936-37...	12,465	9,394	24,669	7,019	5,266	9,475	34,144	53,715
1938....	4,201	2,833	2,610	2,462	2,585	2,533	2,254	2,467	2,671	3,311	3,913	4,346	35,186	1937-38...	9,964	9,644	22,070	7,580	7,392	12,510	34,580	58,927
1939....	4,043	2,890	3,229	2,931	3,416	3,185	2,778	2,792	2,885	3,545	4,437	5,236	41,368	1938-39...	11,570	10,162	24,663	9,532	8,455	15,056	39,719	66,561
1940....	5,356	4,277	3,981	3,610	3,890	3,886	3,219	3,045	3,168	4,483	5,419	6,063	50,398	1939-40...	13,218	13,614	30,442	11,386	9,432	17,208	47,650	77,610
1941....	4,517	3,725	3,904	3,807	4,023	3,336	3,006	2,796	2,920	4,157	4,561	5,767	46,520	1940-41...	15,965	12,147	31,919	11,166	8,722	16,081	48,000	71,397
1942....	5,831	3,892	4,134	4,196	4,320	4,554	3,886	3,223	3,843	4,218	5,023	6,778	53,897	1941-42...	14,485	13,857	32,538	13,070	10,951	19,825	52,363	78,547
1943....	5,431	4,335	4,661	4,463	5,357	5,650	5,427	4,464	4,174	4,930	6,972	7,567	63,431	1942-43...	16,019	14,427	34,909	15,470	14,065	25,073	59,981	95,226
1944....	7,839	7,380	7,165	6,290	6,643	6,095	4,795	4,145	3,521	4,223	5,258	5,663	69,017	1943-44...	19,469	22,384	48,143	19,028	12,461	25,199	73,342	98,068
1945....	5,299	3,267	3,474	3,066	3,375	3,382	2,752	2,206	1,922	2,330	4,350	5,537	40,960	1944-45...	15,144	12,040	30,250	9,823	6,880	13,637	43,887	71,891
1946....	4,911	4,698	3,636	3,859	4,149	2,316	3,863	2,843	438	3,114	5,434	5,133	44,394	1945-46...	12,217	13,245	29,320	10,323	7,144	13,609	42,929	76,115
1947....	5,844	3,897	3,406	3,616	3,831	3,653	3,455	2,731	2,948	3,978	5,501	5,254	49,116	1946-47...	13,681	13,147	30,444	11,100	9,134	16,618	47,062	74,001
1948....	5,223	3,746	3,574	3,343	3,562	4,235	3,044	2,440	2,836	4,098	5,425	6,089	47,615	1947-48...	15,733	12,543	31,619	11,140	8,330	16,117	47,736	70,869
1949....	5,377	4,080	4,315	3,894	3,721	3,744	3,165	3,417	3,879	4,959	6,003	6,477	53,032	1948-49...	15,612	13,772	33,278	11,360	10,461	17,927	51,205	74,997
1950....	5,844	4,191	5,020	4,316	4,338	4,154	3,314	3,626	4,137	5,102	6,144	6,777	56,964	1949-50...	17,439	15,055	36,810	12,808	11,077	19,569	56,379	79,263
1951....	6,584	4,159	5,117	4,989	4,952	4,700	3,826	4,236	4,398	5,651	6,531	6,912	62,054	1950-51...	18,023	15,860	38,872	14,641	12,460	22,112	60,984	85,581

SHEEP AND LAMBS

Year	Federally inspected slaughter ¹																			Total slaughter	
	Calendar year basis													Crop year beginning May 1	May- Nov.	Dec.- Apr.	Crop year May- Apr.	Jan.- Dec.			
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.- Apr.						May- Aug.		Sept.- Dec.	Jan.- Dec.
	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	Thous.	
1935....	1,345	1,137	1,374	1,483	1,584	1,421	1,546	1,655	1,549	1,765	1,407	1,369	5,339	6,216	6,090	17,644	1934-35....	9,788	6,634	16,422	22,000
1936....	1,540	1,314	1,374	1,267	1,213	1,309	1,352	1,395	1,593	1,742	1,514	1,573	5,495	5,269	6,452	17,216	1935-36....	10,936	6,864	17,800	21,555
1937....	1,700	1,315	1,312	1,334	1,371	1,425	1,390	1,498	1,671	1,530	1,321	1,403	5,561	5,684	5,925	17,270	1936-37....	10,148	7,234	17,382	21,455
1938....	1,552	1,424	1,428	1,425	1,550	1,485	1,461	1,603	1,694	1,638	1,453	1,347	5,829	6,099	6,132	18,060	1937-38....	10,206	7,232	17,438	22,423
1939....	1,456	1,361	1,473	1,224	1,392	1,401	1,399	1,457	1,635	1,585	1,469	1,389	5,514	5,649	6,077	17,241	1938-39....	10,884	6,861	17,745	21,614
1940....	1,598	1,313	1,266	1,355	1,420	1,378	1,448	1,489	1,473	1,734	1,462	1,416	5,532	5,735	6,085	17,351	1939-40....	10,338	6,921	17,259	21,571
1941....	1,625	1,391	1,408	1,436	1,551	1,378	1,569	1,522	1,567	1,682	1,424	1,571	5,860	6,020	6,244	18,125	1940-41....	10,404	7,276	17,680	22,309
1942....	1,611	1,407	1,669	1,570	1,475	1,481	1,705	1,840	2,223	2,344	2,126	2,175	6,256	6,501	8,867	21,625	1941-42....	10,594	7,827	18,520	25,585
1943....	1,724	1,499	1,495	1,458	1,622	1,594	1,988	2,269	2,454	2,633	2,370	2,258	6,176	7,472	9,715	23,363	1942-43....	13,194	8,351	21,545	27,073
1944....	1,933	1,501	1,538	1,378	1,644	1,823	1,898	1,924	2,003	2,238	2,013	1,934	6,350	7,339	8,188	21,876	1943-44....	14,929	8,608	23,537	25,355
1945....	2,073	1,622	1,723	1,507	1,824	1,906	1,742	1,568	1,658	2,018	1,772	1,806	6,925	7,040	7,254	21,220	1944-45....	13,593	8,859	22,452	24,639
1946....	1,440	2,196	1,978	1,736	1,374	1,666	1,738	1,578	1,300	2,005	1,529	1,346	7,350	6,356	6,180	19,885	1945-46....	12,488	9,156	21,644	22,788
1947....	1,542	1,271	1,237	1,322	1,355	1,329	1,280	1,253	1,458	1,697	1,471	1,451	5,372	5,217	6,077	16,667	1946-47....	11,190	6,718	17,908	18,706
1948....	1,347	1,209	1,175	1,045	978	1,262	1,195	1,264	1,464	1,632	1,444	1,329	4,776	4,599	5,869	15,343	1947-48....	9,843	6,227	16,070	17,371
1949....	1,235	1,046	949	676	761	898	976	1,126	1,180	1,172	1,060	1,058	3,906	3,761	4,470	12,136	1948-49....	9,239	5,235	14,474	13,780
1950....	1,077	563	939	834	941	1,019	960	1,776	1,063	1,081	969	918	3,713	3,996	4,031	21,739	1949-50....	7,173	4,771	11,944	13,244
1951....	1,058	740	738	657	657	811	863	889	827	1,064	922	810	3,193	3,220	3,643	10,056	1950-51....	7,109	4,111	11,220	11,418

^{1/} Data prior to 1935 can be found in earlier editions of this publication.^{2/} Rounded figures added for all totals except calendar year. Excludes slaughter in Hawaii and Virgin Islands beginning January 1947.^{3/} Total slaughter estimated by the Bureau of Agricultural Economics, includes inspected, noninspected, retail, and farm slaughter. Excludes slaughter in Hawaii and Virgin Islands beginning January 1940.^{4/} Excludes cattle and calves purchased for slaughter for Federal Surplus Relief Corporation from June 1934 to February 1935, and August and September 1936.

Compiled from Bureau of Animal Industry reports.

EXHIBIT "22"

 UNITED STATES DEPARTMENT OF AGRICULTURE
 BUREAU OF AGRICULTURAL ECONOMICS
 WASHINGTON, D. C.

 LIVESTOCK SLAUGHTER - MEAT AND LARD PRODUCTION
 1950 and 1951

United States meat production in 1951 totaled 21.9 billion pounds less than the 23.1 billion pounds produced in 1950, according to the Bureau of Agricultural Economics. The 1951 total meat output (commercial slaughter plus farm slaughter) was 13 percent below the record high production of 25.2 billion pounds of meat in 1944. Beef production, at 8.8 billion pounds, was down 7 percent from 1950 and was over 40 percent of the total meat output. Veal production, at 1.1 billion pounds, was down 14 percent and was the smallest since 1941. Of the total meat produced, veal accounted for 5 percent. Production of pork, at 11.5 billion pounds, was 7 percent above 1950. Nearly 53 percent of the total meat production was pork. Mutton and lamb production totaled 522 million pounds, 13 percent less than the 597 million pounds in 1950 and slightly more than 2 percent of the total meat supply. Lard production at 2.9 billion pounds was 233 million pounds above the 1950 production.

The number of cattle slaughtered in 1951 was 8 percent less than in 1950. Slaughter of cattle under Federal inspection was down 10 percent and other wholesale and retail slaughter was down 6 percent, while farm slaughter remained about the same. A reduction of 15 percent occurred in the number of calves slaughtered compared with 1950; with slaughter under Federal inspection down 15 percent, other wholesale and retail slaughter off 17 percent and farm slaughter off 7 percent. All classes of slaughter showed decreases in the number of sheep and lamb slaughtered. Compared with 1950, slaughter of sheep and lambs under Federal inspection was down 14 percent, other wholesale and retail slaughter was down 8 percent and farm slaughter was down 13 percent. (Continued over)

UNITED STATES LIVESTOCK SLAUGHTER, 1950-51

Species and class of slaughter	1950			1951		
	Head	Av. live weight	Total live weight	Head	Av. live weight	Total live weight
	Thous.	Lb.	Mil. lb.	Thous.	Lb.	Mil. lb.
CATTLE						
Federally inspected	13,103	989	12,960	11,879	992	11,786
Other wholesale and retail	4,798	864	4,147	4,497	885	3,973
Farm	723	787	569	724	726	576
Total	18,624	949	17,676	17,100	955	16,335
CALVES						
Federally inspected	5,850	206	1,205	4,985	209	1,043
Other wholesale and retail	4,123	205	847	3,433	203	697
Farm	531	305	162	495	314	155
Total	10,504	211	2,214	8,913	213	1,895
SHEEP AND LAMBS						
Federally inspected	11,739	96	1,128	10,056	98	989
Other wholesale and retail	1,113	89	99	1,019	89	91
Farm	392	87	34	343	85	29
Total	13,244	95	1,261	11,418	97	1,109
HOGS						
Federally inspected	56,964	244	13,921	63,054	246	15,250
Other wholesale and retail	12,579	119	1,499	14,007	118	1,653
Farm	2,720	139	378	2,520	138	348
Total	72,263	240	15,798	79,581	240	19,251

See other side for meat production estimates.

134 UNITED STATES MEAT PRODUCTION, 1950-1951

Kind of meat and class of slaughter	1950		1951	
	Av.	Total	Av.	Total
	dressed	dressed	dressed	dressed
	weight 1/	weight	weight 1/	weight
	Lb.	Mill. lb.	Lb.	Mill. lb.
BEEF				
Federally inspected	541	7,051	544	8,431
Other wholesale and retail	458	3,197	471	2,118
Farm	401	290	406	294
Total	512	9,538	517	8,843
VEAL				
Federally inspected	115	667	118	583
Other wholesale and retail	114	470	113	389
Farm	176	93	180	89
Total	217	1,230	219	1,061
LAMB AND MUTTON				
Federally inspected	46	534	47	465
Other wholesale and retail	42	47	42	43
Farm	40	16	39	14
Total	45	597	46	522
PORK (excluding lard)				
Federally inspected	185 137	7,788	185 136	8,407
Other wholesale and retail	128	1,609	127	1,783
Farm	135	1,317	136	1,293
Total	135	10,714	134	11,483
TOTAL MEAT		22,079		21,909

UNITED STATES LARD PRODUCTION, 1950-1951

Class of slaughter	1950		1951	
	Lard per	Lard	Lard per	Lard
	100 pounds	production	100 pounds	production
	live weight 1/	live weight 1/	live weight 1/	production
	Lb.	Mill. lb.	Lb.	Mill. lb.
LARD 2/				
Federally inspected	14.5	2,009	14.6	2,225
Other wholesale and retail	11.2	309	11.2	342
Farm	13.4	313	13.1	297
Total	13.9	2,631	13.9	2,864

1/ Excludes animals condemned under Federal inspection. For pork, the average is pork production per head excluding lard.

2/ Includes rendered pork fat.

Hog slaughter was up 8 percent from 1950. Slaughter under Federal inspection increased 9 percent and other wholesale and retail slaughter was 11 percent higher; but farm slaughter showed a 2 percent drop, reaching a new record low. All species but hogs were slaughtered at heavier weights in 1951 than in 1950. The average live weight of cattle slaughtered was 6 pounds heavier than in 1950, while calves and sheep and lambs each averaged 2 pounds heavier. The average live weight of hogs was the same for both years. The lard yield per hundred pounds live weight at 13.9 also was unchanged.

EXHIBIT "23"

UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF AGRICULTURAL ECONOMICS
WASHINGTON, D. C.

May 6, 1953

LIVESTOCK SLAUGHTER - MEAT AND LARD PRODUCTION
1951 - 1952

Meat production in the United States totaled 23.0 billion pounds in 1952 according to the Bureau of Agricultural Economics. This is 5 percent more than the 21.9 billion pounds produced in 1951. The 1952 output (commercial slaughter plus farm slaughter) was the fifth largest on record. The record high production was in 1944, totaling 25.2 billion pounds. Beef production last year, at 9.7 billion pounds, was 9 percent larger than in 1951. Veal production, at 1.2 billion pounds was 11 percent higher than the 1.1 billion pounds produced a year earlier. Mutton and lamb production totaled 648 million pounds, up 24 percent from a year earlier, while hog production, at 11.5 billion pounds, was about the same as in 1951. Hogs were the leading contributor to total meat production in 1952, furnishing 50 percent of the total. Beef represented 42 percent of the total, veal 5 percent, and mutton and lamb 3 percent. Lard production, at 2.9 billion pounds, was 22 million pounds above the 1951 production.

The number of cattle slaughtered in 1952 was 9 percent larger than in 1951. Slaughter of cattle under Federal inspection was up 11 percent; other wholesale and retail slaughter was up 4 percent; and farm slaughter was up 12 percent. The number of calves slaughtered was up 6 percent compared with 1951. Slaughter of calves under Federal inspection was up 6 percent, other wholesale and retail slaughter up 5 percent and farm slaughter up 4 percent. Compared with 1951, the number of sheep and lambs slaughtered was up 25 percent. Federal inspected slaughter of sheep and lambs was up 26 percent; other wholesale and retail slaughter was up 24 percent, while farm slaughter was about the same as a year earlier. (Continued over)

UNITED STATES LIVESTOCK SLAUGHTER, 1951-1952

Species and class of slaughter	1951			1952		
	Head	Av.	Total	Head	Av.	Total
		live	live		live	live
	Thous.	Lb.	100 lb.	Thous.	Lb.	100 lb.
CATTLE						
Federally inspected	11,879	992	11,786	13,165	990	13,035
Other wholesale and retail	4,497	883	3,973	4,691	865	4,060
Farm	724	796	526	812	798	648
Total	17,100	955	16,335	18,668	950	17,743
CALVES						
Federally inspected	4,985	209	1,043	5,294	221	1,168
Other wholesale and retail	3,433	203	697	3,600	214	770
Farm	495	314	155	514	314	161
Total	8,913	213	1,895	9,408	223	2,099
SHEEP AND LAMBS						
Federally inspected	10,056	98	989	12,694	97	1,237
Other wholesale and retail	1,019	89	91	1,268	90	114
Farm	341	85	29	340	85	29
Total	11,416	97	1,109	14,302	96	1,380
HOGS						
Federally inspected	62,054	246	15,250	62,451	243	15,153
Other wholesale and retail	14,007	218	3,047	15,239	216	3,285
Farm	9,520	238	2,267	9,022	237	2,136
Total	85,581	240	20,564	86,712	237	20,574

See other side for meat production estimates.

UNITED STATES MEAT PRODUCTION 1/, 1951-1952

Kind of meat and class of slaughter	1951		1952	
	Av.	Total	Av.	Total
	dressed	dressed	dressed	dressed
	weight 2/ Lb.	weight 2/ Mil. lb.	weight 2/ Lb.	weight Mil. lb.
BEEF				
Federally inspected	544	6,431	546	7,157
Other wholesale and retail	471	2,118	465	2,180
Farm	406 ¹	294	407	330
Total	519	8,843	519	9,667
VEAL				
Federally inspected	118	583	123	650
Other wholesale and retail	113	389	119	430
Farm	180	89	180	93
Total	119	1,061	125	1,173
LAMB AND MUTTON				
Federally inspected	47	465	46	581
Other wholesale and retail	42	43	42	54
Farm	40	13	39	13
Total	46	521	45	648
PORK (excluding lard)				
Federally inspected	136	8,407	135	8,411
Other wholesale and retail	127	1,783	125	1,910
Farm	136	1,293	136	1,226
Total	134	11,483	133	11,547
TOTAL MEAT		21,908		23,035

UNITED STATES LARD PRODUCTION, 1951-1952

Class of slaughter	1951		1952	
	Lard per	Lard	Lard per	Lard
	100 pounds	production	100 pounds	production
	live weight Lb.	Mil. lb.	live weight Lb.	Mil. lb.
LARD 3/				
Federally inspected	14.6	2,225	14.7	2,234
Other wholesale and retail	11.2	342	11.5	378
Farm	13.1	297	12.8	274
Total	13.9	2,864	14.0	2,886

1/Excludes animals condemned under Federal inspection.

2/For pork, the average is pork production per head excluding lard.

3/Includes rendered pork fat.

The number of hogs slaughtered was up 1 percent from 1951. Slaughter under Federal inspection was about the same as in 1951. Other wholesale and retail slaughter of hogs increased 9 percent, while farm slaughter was down 5 percent, reaching a new record low. All species except calves were slaughtered at lighter weights in 1952 than in 1951. The average live weight of cattle slaughtered was 5 pounds lighter than in 1951, sheep and lambs averaged 1 pound lighter, and hogs 3 pounds lighter. Calves averaged 10 pounds heavier in 1952 than in 1951. The yield of lard at 14 pounds per hundred pounds live weight, was one-tenth pound heavier than in 1951.

EXHIBIT "24"

UNITED STATES DEPARTMENT OF AGRICULTURE
 AGRICULTURAL MARKETING SERVICE
 WASHINGTON, D. C.

February 3, 1954

LIVESTOCK SLAUGHTER, BY STATES--DECEMBER, 1953

Production of red meat in commercial slaughter plants in the United States during December 1953 totaled 2,154 million pounds; according to the Crop Reporting Board. December output was 2 percent above the 2,122 million pounds produced in November 1953 but 2 percent less than the 2,198 million pounds produced in December 1952. This estimate of commercial meat production includes slaughter in Federally inspected plants and other wholesale and retail plants but excludes farm slaughter.

Preliminary estimate of red meat production during the year was 23,232 million pounds which was 1,859 million pounds or 9 percent more than in 1952. Beef production in 1953 was 29 percent more than in 1952 and veal production was up 35 percent. Lamb and mutton production was 13 percent above 1952 but pork output was 13 percent less than during 1952.

December beef production totaled 1,092 million pounds. This was 5 percent more than in November and an increase of 27 percent over December a year earlier. There were 2,172,800 head of cattle slaughtered in December--2 percent more than in November and 32 percent more than in December 1952. The average live weight of cattle slaughtered was 940 pounds--15 pounds heavier than in November but 21 pounds lighter than in December 1952.

During 1953, there were 23.7 million head of cattle slaughtered compared with 17.9 million head in 1952. Beef production in 1953 totaled 12,073 million pounds, 29 percent more than in 1952 and compares with 8,549 million pounds produced in 1951. The number of cattle slaughtered in 1953 was above that of 1952 in all States.

Veal production in December totaled 123 million pounds--9 percent less than in November but 23 percent above December 1952. The number of calves slaughtered in December totaled 1,037,400 head. This was 4 percent fewer than in November but 22 percent more than December a year ago. The average live weight of calves slaughtered was 219 pounds compared with 228 in November and 213 in December a year earlier.

The number of calves slaughtered during 1953 was 11.7 million head. This compares with 8.9 million in 1952 and 8.4 million slaughtered in 1951. Veal production totaled 1,461 million pounds last year compared with 1,080 million pounds in 1952 and 972 million pounds in 1951. The number of calves killed in 1953 was above that of 1952 in all States except New Jersey and North Dakota.

Hog slaughter in December totaled 6,461,200 head--3 percent less than in November and 26 percent less than in December 1952. Pork production during December was 875 million pounds, 2 percent less than November and 26 percent under December a year earlier. Slaughter hogs in December averaged 236 pounds which was 4 pounds heavier than a month earlier but 1 pound lighter than a year earlier. Hog slaughter in December was less than a year ago in all States. Lard production totaled 208 million pounds in December which was approximately the same as November but 29 percent less than December 1952. The amount of lard rendered per 100 pounds of live weight was 13.8 pounds, compared with 13.4 a month earlier and 13.7 a year earlier.

Pork production in 1953 totaled 8,980 million pounds. This was 13 percent less than the previous year. The number of hogs killed in 1953 totaled 67.0 million which was 14 percent less than the number slaughtered in 1952. The average live weight of hogs killed in 1953 was 236 pounds, 1 pound lighter than the previous year. Hog slaughter was less than a year ago in all States except Montana.

December production of mutton and lamb was estimated at 64 million pounds, 10 percent above November and 3 percent above December 1952. The number of sheep and lambs slaughtered in December totaled 3,377,200. This was a 5 percent increase over November and 3 percent more than in December a year earlier. Slaughter sheep and lambs averaged 97 pounds live weight compared with 94 in November and 98 in December a year ago.

Mutton and lamb production in 1953 totaled 718 million pounds. This compares with 635 million pounds in 1952 and 508 million pounds in 1951. The number of sheep and lambs slaughtered during the past year was 16 million head, which was 14 percent more than the previous year. The average live weight in 1953 was 95 pounds compared with 97 pounds in 1952. Sheep and lamb slaughter in 1953 was above 1952 in all States except Kentucky which slaughtered fewer and Alabama and Arkansas which had the same number.

Poultry meat production in December totaled 362 million pounds, ready-to-cook basis—2 percent less than in December 1952 and 15 percent above the 1942-51 average. Larger broiler meat production in December did not offset the smaller farm chicken and turkey meat output, compared with December a year ago.

During 1953, a total of 3,868 million pounds of poultry meat was produced, about 1 percent more than in 1952. Larger broiler meat production in all months of 1953 except January and February offset the smaller farm chicken and turkey meat production during the year compared with production in 1952.

This report is made possible through the cooperative efforts of the Agricultural Research Service and the Agricultural Marketing Service.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
CROP REPORTING BOARD

LIVESTOCK SLAUGHTER, UNITED STATES, BY MONTHS ^{1/}

Month	Federally inspected	Number head Other wholesale and retail Thousand head	Total	Average live weight Pounds	Total live weight Mil. pounds
<u>CATTLE</u>					
1953					
January	1,313.2	441.2	1,754.4	969	1,700
February	1,120.2	410.9	1,531.1	970	1,534
March	1,299.5	442.7	1,742.2	964	1,679
April	1,371.4	480.4	1,851.8	956	1,769
May	1,345.0	463.3	1,808.3	950	1,718
June	1,450.3	481.0	1,931.3	932	1,801
July	1,498.2	540.9	2,039.1	922	1,879
August	1,494.0	529.6	2,023.6	914	1,850
September	1,644.1	595.7	2,239.8	908	2,034
October	1,781.8	602.4	2,384.2	912	2,174
November	1,608.9	517.1	2,126.0	925	1,967
December	1,652.9	519.9	2,172.8	940	2,049
Jan.-Dec. 1953	17,629.5	6,025.1	23,654.6	936	22,151
Jan.-Dec. 1952	13,164.7	4,690.8	17,855.5	957	17,025

<u>CALVES</u>					
1953					
January	453.1	315.5	768.6	216	166
February	421.8	303.2	725.0	198	144
March	534.7	372.9	907.6	185	168
April	540.9	374.7	915.6	199	183
May	503.7	345.6	849.3	226	192
June	586.0	387.9	973.9	235	229
July	615.7	398.0	1,013.7	244	247
August	602.1	418.9	1,021.0	251	257
September	587.2	462.0	1,049.2	241	277
October	776.2	475.3	1,251.5	238	298
November	658.1	427.5	1,085.6	228	247
December	633.6	403.8	1,037.4	219	228
Jan.-Dec. 1953	7,013.1	4,685.3	11,698.4	225	2,636
Jan.-Dec. 1952	5,293.8	3,600.1	8,893.9	218	1,938

<u>HOGS</u>					
1953					
January	6,267.1	1,500.7	7,767.8	237	1,842
February	4,549.5	1,268.4	5,817.9	230	1,341
March	4,962.0	1,276.4	6,238.4	228	1,419
April	4,324.7	1,128.9	5,453.6	230	1,255
May	3,642.6	919.6	4,562.2	239	1,091
June	3,607.4	843.8	4,451.2	254	1,129
July	3,275.7	834.2	4,109.9	254	1,043
August	3,395.9	883.1	4,279.0	234	1,001
September	4,059.4	1,020.7	5,080.1	223	1,132
October	4,994.2	1,106.5	6,100.7	224	1,365
November	5,540.4	1,118.1	6,658.5	232	1,545
December	5,194.2	1,267.0	6,461.2	236	1,525
Jan.-Dec. 1953	53,813.1	13,167.4	66,980.5	234	15,688
Jan.-Dec. 1952	62,450.7	15,239.4	77,690.1	237	18,438

^{1/}Excludes farm slaughter.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
CROP REPORTING BOARD

LIVESTOCK SLAUGHTER, UNITED STATES, BY MONTHS 1/

Month	Number head			Average	Total
	Federally	Other wholesale	Total	live	live
	inspected	and retail		weight	weight
	<u>Thousand head</u>			<u>Pounds</u>	<u>Mil. pounds</u>
<u>Sheep and lambs</u>					
1953					
January	1,288.7	116.8	1,405.5	100	140
February	1,088.2	92.1	1,180.3	102	120
March	1,190.1	106.0	1,296.1	102	132
April	1,099.5	125.9	1,225.4	99	121
May	1,014.7	120.9	1,135.6	95	108
June	1,055.3	147.4	1,202.7	88	106
July	1,108.0	151.1	1,259.1	90	113
August	1,157.6	151.1	1,308.7	91	118
September	1,366.2	171.1	1,537.3	89	137
October	1,528.9	191.8	1,720.7	92	158
November	1,159.3	158.2	1,317.5	94	124
December	1,226.9	150.3	1,377.2	97	134
Jan.-Dec. 1953	14,333.4	1,682.7	15,966.1	95	1,512
Jan.-Dec. 1952	12,694.1	1,268.3	13,962.4	97	1,351

MEAT AND LARD PRODUCTION, UNITED STATES, BY MONTHS 1/

Month	Beef	Veal	Pork	Lamb and mutton	Total red meat 2/	Poultry meat 3/	Lard 4/
<u>Million pounds</u>							
1953							
January	928	92	1,030	67	2,117	191	270
February	850	81	759	57	1,747	193	190
March	933	95	810	63	1,901	221	194
April	991	102	714	58	1,865	247	174
May	963	107	621	52	1,743	289	151
June	1,001	129	644	51	1,825	330	150
July	1,036	138	597	54	1,825	322	140
August	1,008	143	582	56	1,789	387	126
September	1,087	153	664	65	1,969	430	139
October	1,145	163	794	73	2,175	425	174
November	1,039	135	890	58	2,122	471	207
December	1,292	123	875	54	2,154	362	208
Jan.-Dec. 1953	12,073	1,461	8,980	718	23,232	5/3,868	2,123
Jan.-Dec. 1952	9,337	1,060	10,321	635	21,373	6/3,846	2,612

1/ Excludes farm slaughter.

2/ Excludes lard and rendered pork fat.

3/ Chicken and turkey meat, ready to cook basis.

4/ Includes rendered pork fat.

5/ Current estimates of monthly poultry meat production based on available indications of marketings developed from information on inventories, numbers raised, intentions to raise and market poultry as well as data on chick placements and current monthly marketings.

6/ The 1952 estimates of monthly production are based on the monthly distribution of marketings as reported at the end of year by producers and processors and on other marketing data.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
CROP REPORTING BOARD

CATTLE SLAUGHTER 1/

State	December				January-December			
	Number slaughtered		Total live weight		Number slaughtered		Total live weight	
	1952	1953	1952	1953	1952	1953	1952	1953
	Head		Thous. pounds		Head		Thous. pounds	
Eng. 2/	22,200	28,600	22,734	28,086	232,300	277,400	237,504	278,543
N.Y.	47,000	57,000	53,198	59,413	511,000	627,000	571,478	685,507
N.J.	15,000	26,000	17,968	29,251	180,600	246,400	210,525	289,375
Pa.	55,000	65,000	57,082	65,603	658,000	740,000	675,452	752,487
Ohio	81,000	99,000	77,091	92,186	874,000	1,120,000	829,023	1,042,870
Ind.	40,000	60,000	36,860	55,490	442,000	619,000	398,202	566,499
Ill.	155,000	200,000	155,445	193,741	1,655,000	2,137,000	1,632,791	2,069,862
Mich.	52,000	63,000	51,666	59,228	628,000	760,000	610,778	717,483
Wis.	46,000	75,000	49,004	77,010	541,000	695,000	562,760	717,533
Minn.	98,000	127,000	100,049	131,202	1,038,000	1,360,000	1,058,705	1,368,353
Iowa	130,000	165,000	132,613	165,355	1,376,000	1,842,000	1,388,579	1,825,967
Mo.	77,000	96,000	71,699	87,280	795,000	1,055,000	735,651	959,533
N.Dak.	11,100	11,000	11,152	11,074	99,800	118,800	100,727	116,259
S.Dak.	19,000	26,000	19,250	26,535	212,400	287,800	218,769	288,634
Nebr.	112,000	156,000	112,197	156,499	1,186,000	1,614,000	1,185,381	1,567,150
Kans.	95,000	116,000	93,494	113,499	897,000	1,254,000	861,567	1,192,771
Del. &								
Md. 3/	13,800	18,900	14,415	19,114	156,500	200,700	162,671	203,101
Va.	8,800	12,100	8,655	10,860	100,500	137,900	94,322	129,822
W.Va.	3,900	4,800	3,642	4,268	43,400	62,100	45,315	56,294
N.C.	7,200	9,800	5,486	7,479	103,400	126,100	81,267	98,025
S.C.	4,100	6,700	2,746	4,543	60,000	85,800	41,570	58,378
Ga.	25,000	39,000	16,709	25,845	290,000	438,000	196,327	292,803
Fla.	15,000	31,000	11,229	22,423	171,900	305,000	130,568	220,612
Ky.	16,000	21,000	13,728	17,737	169,200	228,900	146,140	195,821
Tenn.	27,000	42,000	20,830	32,620	280,400	454,000	218,041	353,707
Ala.	14,400	18,200	10,300	12,361	169,500	215,600	121,988	151,487
Miss.	5,300	8,800	4,254	6,949	58,700	103,800	45,299	79,106
Ark.	4,400	6,400	3,271	4,496	58,700	77,500	44,046	54,994
La.	7,800	15,300	5,600	10,496	92,800	146,100	69,049	102,963
Okla.	34,000	43,000	29,479	35,876	339,000	473,000	287,729	384,234
Texas	109,000	152,000	83,969	116,258	1,175,000	1,635,000	929,201	1,293,533
Mont.	4,500	6,200	4,151	5,642	51,800	69,900	49,609	65,024
Idaho	8,200	10,500	8,403	10,240	70,800	107,400	68,831	102,496
Wyo.	700	1,100	603	956	9,500	13,500	8,725	12,058
Colo.	56,000	67,000	53,627	64,783	579,000	759,000	568,791	729,217
N.Mex.	3,200	3,600	2,637	2,987	38,000	47,000	31,975	38,416
Ariz.	7,600	9,400	6,509	8,026	86,000	109,200	72,053	93,372
Utah	10,100	13,800	9,452	12,936	105,000	152,500	99,197	139,913
Nev.	1,300	1,600	1,274	1,663	13,900	19,300	14,324	19,645
Wash.	27,000	36,000	26,198	33,869	284,000	384,000	276,283	365,277
Oreg.	19,000	22,000	17,788	19,713	198,400	262,000	190,126	238,514
Calif.	163,000	202,000	161,477	200,772	1,812,000	2,236,200	1,817,021	2,206,363
U. S.	1,651,600	2,172,800	1,587,934	2,043,374	17,855,500	23,654,600	17,095,360	22,151,013

1/ 2/ 3/ See footnotes page 9.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
CROP REPORTING BOARD

CATTLE SLAUGHTER. 1/

State	December				January-December			
	Number slaughtered		Total live weight		Number slaughtered		Total live weight	
	1952	1953	1952	1953	1952	1953	1952	1953
	Head		Thous. pounds		Head		Thous. pounds	
N. Eng. 2/	34,000	36,000	3,096	3,347	338,800	413,000	31,156	38,980
N. Y.	76,000	86,000	8,412	11,271	880,000	1,034,000	115,419	142,977
N. J.	22,000	26,000	3,779	4,732	309,000	303,000	60,644	56,108
Pa.	61,000	71,000	7,247	8,403	664,000	786,000	86,922	102,353
Ohio	20,000	24,000	3,198	4,050	246,000	290,000	42,155	51,101
Ind.	12,300	16,000	2,828	2,939	151,400	192,700	34,005	38,976
Ill.	61,000	78,000	11,933	15,631	648,000	823,000	127,819	165,772
Mich.	32,000	54,000	4,935	7,342	393,000	674,000	65,247	104,893
Wis.	118,000	129,000	14,366	15,171	1,044,000	1,303,000	134,204	163,409
Minn.	60,000	58,000	9,042	9,251	452,000	527,000	73,842	87,339
Iowa	31,000	41,000	7,151	10,623	294,000	433,000	66,725	105,890
Mo.	26,000	30,000	6,505	8,189	267,800	307,400	65,250	81,174
N. Dak.	2,100	1,900	576	481	26,900	26,200	7,297	6,912
S. Dak.	400	600	97	172	3,300	6,200	901	1,911
Nebr.	2,100	5,800	660	2,078	21,800	57,300	6,390	18,622
Kans.	20,000	22,000	6,872	7,324	211,700	294,500	68,092	98,903
Del. &								
Mi. 3/	13,800	18,600	2,392	3,249	167,000	218,000	30,199	39,290
Va.	8,900	13,700	1,964	4,448	168,300	210,600	35,796	47,440
W. Va.	1,500	1,700	274	330	18,700	23,800	3,703	4,713
N. C.	3,200	4,300	557	801	47,700	54,000	8,179	9,538
S. C.	700	1,100	191	217	11,400	16,000	2,998	3,526
Ga.	10,000	16,000	2,926	4,498	110,000	177,600	32,352	55,080
Fla.	5,400	8,700	1,544	2,467	47,200	92,800	13,137	26,452
Ky.	2,600	2,400	649	542	52,900	66,800	10,583	14,497
Tenn.	23,000	28,000	4,651	4,312	318,000	413,800	68,979	84,348
Ala.	4,800	7,900	1,992	2,830	54,800	92,500	20,446	36,929
Miss.	6,900	8,400	3,040	3,336	69,800	96,500	29,481	39,732
Ark.	2,000	3,300	962	1,551	20,100	32,200	9,294	15,119
La.	25,000	28,000	9,160	9,695	256,800	328,000	94,935	121,230
Okla.	13,900	19,000	6,223	8,588	145,900	219,100	62,956	95,750
Texas	86,000	114,000	36,563	47,238	861,000	1,305,000	372,751	542,864
Mont.	400	700	158	261	5,600	8,400	2,004	3,230
Idaho	1,700	1,900	527	533	11,600	23,300	3,594	7,524
Wyo.	100	200	29	46	1,100	1,400	311	406
Colo.	5,400	6,300	2,094	2,334	38,600	63,600	13,730	21,775
N. Mex.	400	600	202	263	4,300	5,900	1,832	2,453
Ariz.	1,100	1,600	490	690	7,500	15,200	3,348	6,432
Utah	1,100	1,300	334	399	13,600	15,500	4,160	4,659
Nev.	300	500	114	188	3,600	5,300	1,380	1,902
Wash.	4,100	5,100	1,356	1,752	45,000	65,200	13,053	21,050
Oreg.	3,900	5,800	1,223	1,899	37,700	57,300	11,574	17,090
Calif.	44,000	59,000	10,598	14,044	424,000	620,200	100,809	147,724
U. S.	848,100	1,037,400	180,810	227,515	8,893,900	11,698,400	1,937,652	2,636,080

1/ 2/ 3/ See footnotes page 9.

UNITED STATES DEPARTMENT OF AGRICULTURE
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HOG SLAUGHTER 1/

State	December				January-December			
	Number slaughtered	Total live weight	Number slaughtered	Total live weight	Number slaughtered	Total live weight	Number slaughtered	Total live weight
	1952	1953	1952	1953	1952	1953	1952	1953
	Head	Thous. pounds	Head	Thous. pounds	Head	Thous. pounds	Head	Thous. pounds
N. Eng. 2/	94,360	72,300	23,311	17,843	905,200	820,800	224,208	196,006
N. Y.	166,000	137,000	35,363	30,021	1,705,000	1,534,000	357,907	326,899
N. J.	173,000	133,000	37,146	27,265	1,740,000	1,495,000	373,420	311,377
Pa.	292,000	251,000	66,876	56,882	3,047,000	2,612,000	569,116	568,361
Ohio	414,000	316,000	97,603	73,397	4,270,000	3,738,000	955,938	833,948
Ind.	341,000	318,000	83,460	79,487	3,471,000	3,290,000	829,875	806,604
Ill.	906,000	589,000	229,884	145,501	7,882,000	6,619,000	1,976,580	1,623,602
Mich.	181,000	132,000	45,247	32,351	1,988,000	1,644,000	473,143	404,650
Wis.	383,000	316,000	91,857	75,031	3,416,000	2,893,000	836,133	692,929
Minn.	791,000	500,000	191,295	120,005	5,971,000	5,239,000	1,506,155	1,279,963
Iowa	1,516,000	1,158,000	372,870	283,771	12,057,000	10,922,000	3,058,087	2,711,952
Mo.	508,000	296,000	123,745	72,420	3,963,000	3,359,000	955,104	788,919
N. Dak.	49,000	31,000	10,615	6,917	287,000	233,100	70,592	57,155
S. Dak.	281,000	238,000	66,300	57,527	2,369,000	2,076,000	608,439	518,874
Nebr.	478,000	292,000	118,391	72,087	3,290,000	2,717,000	849,813	686,022
Kans.	307,000	197,000	76,031	48,278	2,562,000	2,036,000	620,349	489,437
Del. &								
Md. 3/	104,000	87,100	22,875	18,880	1,145,500	1,038,300	246,535	219,588
Va.	111,000	108,000	23,264	23,113	1,286,000	1,240,000	275,527	257,295
W. Va.	15,000	14,400	3,527	3,067	187,400	162,200	41,604	35,308
N. C.	71,000	66,000	14,820	13,512	732,000	711,000	155,062	146,255
S. C.	49,000	40,000	9,640	8,110	483,000	445,000	97,214	87,902
Ga.	196,000	173,000	36,050	33,353	1,823,000	1,615,000	349,208	304,498
Fla.	82,000	60,000	15,273	11,614	625,000	551,000	109,249	104,319
Ky.	100,000	73,000	23,158	16,960	1,067,000	869,000	246,127	197,784
Tenn.	149,000	108,000	34,801	25,019	1,528,000	1,316,000	341,036	292,266
Ala.	70,000	62,000	14,271	12,800	662,000	607,000	135,778	123,722
Miss.	23,000	21,000	4,871	4,473	232,500	207,200	49,445	44,314
Ark.	28,000	24,000	5,872	5,167	274,000	246,000	57,207	52,339
La.	29,000	25,000	5,483	4,290	259,600	205,900	48,781	37,460
Okla.	108,000	84,000	24,914	19,951	1,025,000	769,000	234,402	174,527
Texas	211,000	151,000	48,924	35,149	2,036,000	1,490,000	461,635	340,420
Mont.	21,000	17,000	4,537	3,941	210,000	216,000	47,202	47,556
Idaho	18,000	10,100	3,819	2,243	205,900	134,000	42,596	28,767
Wyo.	2,200	2,000	502	453	24,400	20,800	5,577	4,762
Colo.	99,000	57,000	23,671	13,759	782,000	640,400	190,139	153,405
N. Mex.	7,500	7,400	1,748	1,746	78,600	66,900	18,107	15,573
Ariz.	43,400	9,900	3,107	2,233	139,600	91,200	30,978	20,438
Utah	25,000	24,000	5,728	5,674	266,000	243,000	60,727	54,113
Nev.	1,200	1,000	272	242	13,400	10,700	2,915	2,412
Nash.	84,000	50,000	18,032	11,001	912,000	583,000	178,179	127,524
Oreg.	48,000	33,000	10,904	7,567	469,000	382,000	103,908	85,210
Calif.	218,000	177,000	49,959	41,500	2,380,000	1,892,000	543,946	433,275
U.S.	8,776,600	6,461,200	2,080,016	1,524,600	77,690,100	66,980,500	18,437,943	15,687,731

UNITED STATES DEPARTMENT OF AGRICULTURE
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SHEEP AND LAMB SLAUGHTER 1/

State	December				January			
	Number slaughtered		Total live weight		Number slaughtered		Total live weight	
	1952	1953	1952	1953	1952	1953	1952	1953
	Head		Thous. pounds		Head		Thous. pounds	
N. Eng. 2/	30,700	29,600	2,986	2,743	309,700	344,400	29,145	31,606
N. Y.	121,000	126,000	11,091	11,558	1,319,000	1,338,000	121,238	121,084
N. J.	87,000	92,000	8,243	8,864	893,000	959,000	83,342	88,516
Pa.	22,000	19,000	1,863	1,568	237,100	258,000	19,705	21,081
Ohio	15,000	25,000	1,369	2,216	205,600	239,300	17,640	20,122
Ind.	6,900	14,200	734	1,288	61,200	128,300	5,849	11,290
Ill.	121,000	92,000	12,066	9,170	1,143,000	1,210,000	111,927	118,161
Mich.	39,000	70,000	3,583	6,627	378,000	613,000	34,314	55,922
Wis.	14,300	22,000	1,323	2,056	132,600	180,900	12,625	17,009
Minn.	110,000	101,000	11,000	9,992	842,000	947,000	84,705	92,738
Iowa	143,000	173,000	14,220	16,987	1,292,000	1,661,000	129,442	160,911
Mo.	61,000	65,000	5,960	6,288	590,000	713,000	56,893	67,618
N. Dak.	30,000	23,000	3,038	2,334	231,000	250,100	24,429	25,602
S. Dak.	40,000	43,000	3,904	4,134	321,000	417,000	32,298	40,437
Nebr.	112,000	111,000	11,584	11,312	1,163,000	1,244,000	120,730	124,359
Kans.	48,000	37,000	4,629	3,524	573,000	598,000	54,083	55,177
Del. &								
Md. 3/	7,200	8,300	608	723	84,000	99,300	7,360	8,592
Va.	300	500	33	44	10,500	12,300	935	1,038
W. Va.	300	300	28	33	4,400	6,200	395	533
N. C.	---	100	---	7	1,500	1,600	135	140
S. C.	---	100	---	7	100	300	5	24
Ga.	100	200	8	14	1,200	1,400	105	113
Fla.	---	---	---	---	200	600	16	49
Ky.	11,000	9,100	944	790	188,700	171,000	16,223	14,443
Tenn.	1,000	1,300	88	105	59,600	61,000	4,686	5,313
Ala.	100	---	8	---	500	500	40	37
Miss.	---	---	---	---	800	500	64	30
Ark.	---	---	---	---	100	100	7	7
La.	---	100	---	6	1,100	1,300	95	99
Okla.	11,200	8,700	984	814	181,300	200,600	16,077	17,065
Texas	45,000	40,000	3,818	3,460	672,000	782,000	57,464	62,980
Mont.	700	800	71	73	6,700	8,800	686	844
Idaho	1,700	1,100	172	115	24,900	29,200	2,552	3,082
Wyo.	200	300	17	26	1,700	3,300	165	316
Colo.	48,000	46,000	4,958	4,737	581,000	740,000	60,505	73,937
N. Mex.	1,700	1,600	162	152	17,000	24,400	1,785	2,576
Ariz.	1,000	1,300	88	130	13,100	16,500	1,232	1,582
Utah	13,600	19,000	1,706	2,019	217,300	256,800	23,014	24,746
Nev.	400	600	37	69	6,400	7,600	626	760
Wash.	14,800	11,000	1,600	1,130	135,700	152,000	14,055	15,725
Oreg.	16,000	21,000	1,601	2,123	189,400	215,800	18,651	20,920
Calif.	156,000	163,000	15,677	16,555	1,872,000	2,092,000	185,693	204,991
U. S.	1,331,200	1,377,200	130,201	133,793	13,962,400	15,966,100	1,350,936	1,511,569

1/ 2/ 3/ See footnotes page 9.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
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LIVESTOCK SLAUGHTER, AVERAGE LIVE WEIGHT PER HEAD, DECEMBER 1952 AND 1953 1/								
State	Cattle		Calves		Hogs		Sheep and lambs	
	1952	1953	1952	1953	1952	1953	1952	1953
	Pounds							
N.Eng. 2/	1,031	983	93	92	246	246	98	93
N.Y.	1,137	1,039	111	130	213	219	91	92
N.J.	1,174	1,124	169	178	214	205	95	96
Pa.	1,040	1,019	121	119	224	227	83	83
Ohio	954	935	162	170	236	232	89	88
Ind.	917	931	230	188	245	250	107	91
Ill.	1,004	966	196	200	254	247	99	100
Mich.	994	943	153	136	250	246	92	95
Wis.	1,058	1,030	121	117	240	237	93	94
Minn.	1,023	1,029	151	159	242	240	100	99
Iowa	1,018	1,000	228	258	246	245	99	98
Mo.	926	912	255	269	244	244	98	97
N.Dak.	1,011	987	270	260	220	224	103	102
S.Dak.	1,029	1,013	272	299	236	242	98	96
Nebr.	1,000	1,004	322	358	248	247	103	102
Kans.	986	960	341	337	248	246	96	95
Del., Md. 3/	1,044	1,000	174	177	220	217	85	87
Va.	985	895	220	325	210	214	95	88
W.Va.	939	889	190	193	229	213	97	92
N.C.	760	761	174	187	210	205	---	90
S.C.	668	680	256	197	196	202	---	70
Ga.	662	667	292	288	184	193	81	89
Fla.	743	721	286	285	171	193	---	---
Ky.	883	858	172	226	231	231	86	87
Tenn.	779	783	200	155	234	233	89	84
Ala.	716	681	413	360	204	207	87	---
Miss.	806	787	443	397	209	218	---	---
Ark.	737	701	481	470	207	219	---	---
La.	717	686	363	346	187	169	---	75
Okla.	856	830	446	458	231	239	88	94
Texas	768	764	423	413	232	232	85	87
Mont.	920	903	385	397	220	231	102	97
Idaho	1,031	976	306	288	209	222	105	105
Wyo.	884	870	305	324	220	227	99	97
Colo.	965	968	388	374	240	241	104	102
N.Mex.	824	830	449	417	233	236	98	93
Ariz.	853	853	457	436	230	225	95	98
Utah	935	934	316	302	228	236	126	105
Nev.	1,014	1,041	376	366	230	223	91	110
Wash.	970	945	333	342	214	222	108	102
Oreg.	932	900	312	327	225	227	102	100
Calif.	991	995	242	239	229	234	101	102
U.S.	961	940	213	219	237	236	98	97

1/Includes slaughter under Federal inspection and other wholesale and retail slaughter; excludes farm slaughter. Averages are based on unrounded numbers.

2/Includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

3/Includes the District of Columbia.

CATTLE, HOGS, SHEEP, HORSES, AND MULES, 1952

TABLE 509.—Meats and lard: Production, by class of slaughter, United States, 1935-51¹

Year	Commercial			Farm	Total	Commercial			Farm	Total
	Federally inspected	Other wholesale and retail	Total			Federally inspected	Other wholesale and retail	Total		
	Million pounds	Million pounds	Million pounds			Million pounds	Million pounds	Million pounds		
BEEF					PORK, EXCLUDING LARD					
1935	4,610	1,753	6,363	245	6,608	3,494	761	4,255	1,664	5,919
1936	5,317	1,802	7,119	239	7,358	4,737	965	5,702	1,772	7,474
1937	4,699	1,879	6,578	220	6,798	4,254	1,011	5,265	1,686	6,951
1938	4,798	1,887	6,685	223	6,908	4,884	1,111	5,995	1,685	7,680
1939	4,803	1,983	6,786	225	7,011	5,552	1,337	6,889	1,771	8,660
1940	4,964	1,984	6,948	227	7,175	6,614	1,632	8,246	1,798	10,044
1941	5,732	2,126	7,858	224	8,082	6,345	1,559	7,904	1,624	9,528
1942	6,343	2,249	8,592	251	8,843	7,562	1,672	9,234	1,642	10,876
1943	5,966	2,340	8,306	265	8,571	9,308	2,454	11,762	1,878	13,640
1944	6,652	2,149	8,801	311	9,112	9,456	2,046	11,502	1,802	13,304
1945	7,236	2,700	9,936	340	10,276	6,387	2,476	8,863	1,854	10,697
1946	5,661	3,349	9,010	363	9,373	6,642	2,592	9,234	1,916	11,150
1947	7,535	2,561	10,096	336	10,432	7,080	1,731	8,811	1,691	10,502
1948	6,433	2,333	8,766	309	9,075	6,832	1,654	8,486	1,569	10,055
1949	6,998	2,144	9,142	297	9,439	7,352	1,523	8,875	1,411	10,286
1950	7,051	2,197	9,248	290	9,538	7,788	1,609	9,397	1,317	10,714
1951	6,431	2,118	8,549	294	8,843	8,407	1,783	10,190	1,293	11,483
VEAL					LAMB AND MUTTON					
1935	608	322	930	93	1,023	701	147	848	19	867
1936	653	327	980	95	1,075	680	147	827	27	854
1937	675	348	1,023	85	1,108	683	143	826	26	852
1938	581	332	913	81	994	720	151	871	26	897
1939	559	348	907	84	991	694	152	846	26	872
1940	568	328	896	85	981	702	150	852	24	876
1941	599	353	952	84	1,036	749	150	899	24	923
1942	667	399	1,066	85	1,151	879	139	1,018	24	1,042
1943	597	481	1,078	89	1,167	958	122	1,080	24	1,104
1944	926	703	1,629	109	1,738	887	114	1,001	23	1,024
1945	823	729	1,552	112	1,664	913	117	1,030	24	1,054
1946	642	687	1,329	114	1,443	850	96	946	22	968
1947	904	589	1,493	112	1,605	717	62	779	20	799
1948	791	532	1,323	100	1,423	665	63	728	19	747
1949	746	494	1,240	94	1,334	536	51	587	16	603
1950	667	470	1,137	93	1,230	534	47	581	16	597
1951	583	389	972	89	1,061	465	43	508	14	522
ALL MEAT, EXCLUDING LARD					LARD					
1935	9,413	2,983	12,396	2,031	14,427	662				1,276
1936	11,387	3,241	14,628	2,133	16,761	992				1,679
1937	10,311	3,381	13,692	2,017	15,709	759				1,431
1938	10,983	3,481	14,464	2,015	16,479	1,034				1,728
1939	11,608	3,820	15,428	2,106	17,534	1,272				2,037
1940	12,848	4,094	16,942	2,134	19,076	1,527				2,288
1941	13,425	4,188	17,613	1,956	19,569	1,526				2,228
1942	15,451	4,459	19,910	2,002	21,912	1,724				2,401
1943	16,829	5,397	22,226	2,254	24,482	2,080				2,865
1944	17,921	6,012	23,933	2,245	25,178	2,367	279	2,646	408	3,054
1945	15,359	6,002	21,361	2,330	23,691	1,311	335	1,646	426	2,066
1946	13,795	6,724	20,519	2,415	22,934	1,344	353	1,697	439	2,136
1947	16,236	4,943	21,179	2,179	23,358	1,722	277	1,999	403	2,402
1948	14,721	4,582	19,303	1,997	21,300	1,680	252	1,932	389	2,321
1949	15,632	4,212	19,844	1,818	21,662	1,923	270	2,193	341	2,534
1950	16,040	4,323	20,363	1,716	22,079	2,009	309	2,318	313	2,631
1951	15,886	4,333	20,219	1,690	21,909	2,225	342	2,567	297	2,864

¹ Excludes meat production under Federal inspection in Hawaii and the Virgin Islands, 1940 to date.² Includes meat produced from animals slaughtered under the emergency Government relief-purchasing programs.³ Preliminary.

Bureau of Agricultural Economics.

MEAT AND MEAT PRODUCTS

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TABLE 510.—Meats and meat food products: Quantity prepared and processed under Federal inspection, 1945-51¹

Product	1945	1946	1947	1948	1949	1950	1951
	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds
Meat placed in cure:							
Beef.....	113,129	68,442	124,029	112,540	111,400	115,240	105,832
Pork.....	2,402,085	2,577,861	3,029,593	3,066,223	3,370,670	3,448,683	3,618,354
Smoked and/or dried:							
Beef.....	44,242	28,072	68,103	56,649	51,272	58,434	59,951
Pork.....	1,487,354	1,599,312	1,840,341	1,885,816	2,025,066	2,163,021	2,401,934
Sausage:							
Fresh, finished.....	479,161	315,569	246,968	231,836	238,084	268,470	214,627
Smoked and/or cooked.....	1,101,153	973,675	1,019,089	932,457	964,577	719,066	1,047,833
To be dried or semidried.....	135,881	109,398	136,503	108,835	115,500	122,811	114,188
Loaf, headcheese, chile con carne, jellied products, etc.	249,762	208,409	191,123	184,954	174,896	184,310	193,454
Cooked meat:							
Beef.....	32,712	24,726	33,339	27,288	29,300	52,608	57,405
Pork.....	323,096	426,106	526,138	524,621	598,097	524,581	445,682
Canned meat and meat food products:							
Beef.....	268,385	146,173	136,452	116,417	79,683	80,160	173,624
Pork.....	850,530	644,266	447,471	458,896	491,631	530,348	573,727
Sausage.....	151,865	70,192	117,976	87,066	76,793	84,547	119,297
Soup.....	339,860	392,618	419,173	451,919	408,468	420,731	443,731
All other.....	655,280	482,204	397,479	433,880	391,615	538,595	601,322
Bacon, sliced.....	382,675	522,918	589,091	609,492	712,743	749,452	773,435
Lard:							
Rendered.....	1,213,855	1,263,212	1,632,749	1,600,601	1,820,995	1,902,879	2,111,779
Refined.....	1,005,256	1,046,816	1,243,736	1,194,742	1,423,391	1,357,399	1,606,460
Rendered pork fat:							
Rendered.....	97,089	80,297	89,729	79,575	102,330	106,509	104,664
Refined.....	66,472	54,808	50,602	44,608	58,659	56,189	54,665
Oleo stock.....	135,190	81,867	100,404	74,943	94,697	106,323	87,223
Edible tallow.....	103,358	62,150	88,432	61,775	76,549	74,148	64,785
Compound containing animal fat.....	264,472	263,166	253,774	215,832	214,983	278,245	263,527
Margarine containing animal fat.....	49,666	33,284	36,292	16,723	25,321	21,762	20,358
Miscellaneous.....	46,631	40,452	60,478	77,005	99,188	640,053	1,145,190
Total.....	12,019,160	11,515,993	12,870,064	12,653,290	13,755,917	14,604,594	16,403,047

¹ The figures in this table do not represent production, as a product may be inspected more than once in course of further manufacture and some products processed are not under Federal inspection.

Bureau of Animal Industry.

DAIRY AND POULTRY PRODUCTS, 1952

TABLE 578.—Chickens: Number on farms, and value, United States, Jan. 1, 1909-52¹

Year	Number					Value per head	Total value
	Hens	Pullets	Hens and pullets	Other chickens	All chickens		
	Thousands	Thousands	Thousands	Thousands	Thousands	Cents	1,000 dollars
1909			304,819	35,381	340,200	43.8	149,008
1910 ¹					280,341		
1910			318,965	37,023	355,988	47.3	168,382
1911			341,860	39,680	381,540	45.6	173,982
1912			329,070	38,196	367,266	42.2	154,986
1913			326,744	37,926	364,670	46.5	169,572
1914			328,389	38,116	366,505	49.1	179,954
1915			339,773	39,438	379,211	46.5	176,333
1916			331,034	38,424	369,458	49.1	181,404
1917			322,093	37,386	359,479	59.4	213,531
1918			325,581	37,791	363,372	77.5	281,613
1919			350,662	40,702	391,364	95.5	373,753
1920 ¹					369,637		
1920			341,474	39,635	381,109	97.2	370,438
1921			331,632	38,493	370,125	89.3	330,522
1922			353,875	41,075	394,950	80.8	319,120
1923			371,930	43,170	415,100	74.6	309,665
1924			389,626	45,227	434,853	76.1	330,859
1925 ¹					409,291	92.6	379,011
1925			390,517	44,481	434,998	79.3	344,880
1926			393,849	44,151	438,000	88.5	387,659
1927			414,875	46,124	460,999	90.6	417,846
1928			427,139	47,858	474,997	85.8	407,574
1929			403,774	45,232	449,006	91.1	408,946
1930 ¹					378,878	84.9	321,625
1930	167,139	253,312	420,451	48,040	468,491	92.8	434,830
1931	158,214	243,562	401,776	47,967	449,743	70.3	315,968
1932	156,178	229,648	385,826	50,989	436,815	61.5	268,767
1933	154,037	236,706	390,743	53,780	444,523	44.9	199,753
1934	146,997	238,344	385,341	48,596	433,937	42.0	182,424
1935 ¹					371,603	51.6	191,504
1935	138,609	211,798	350,407	39,551	389,958	54.4	212,071
1936	136,187	226,432	362,619	40,827	403,446	75.5	304,725
1937	130,445	249,309	379,754	44,167	423,921	65.6	278,120
1938	137,958	215,006	352,964	36,660	389,624	75.6	294,718
1939	134,331	241,810	376,141	42,450	418,591	70.0	292,852
1940 ¹					337,949	66.0	189,088
1940	139,079	253,576	392,655	45,633	438,288	60.5	265,000
1941	141,430	239,885	381,315	41,526	422,841	65.4	276,460
1942	150,170	277,741	427,911	49,024	476,935	83.3	397,509
1943	170,337	318,622	488,959	53,088	542,047	104.0	563,986
1944	174,000	349,587	523,587	58,610	582,197	118.0	685,901
1945 ¹					433,111	123.0	531,860
1945	172,426	301,454	473,880	42,617	516,497	121.0	626,259
1946	150,712	322,108	472,820	50,407	523,227	127.0	662,734
1947	150,490	280,956	431,446	35,771	467,217	144.0	672,690
1948	139,587	277,983	417,570	32,074	449,644	144.0	648,293
1949	141,044	258,336	399,380	31,496	430,876	166.0	716,344
1950 ¹					342,464		
1950	137,014	286,759	423,773	32,776	456,549	136.0	622,994
1951	146,340	263,860	410,200	32,457	442,657	146.0	644,951
1952 ¹	144,312	278,913	423,225	30,273	453,498	153.0	694,391

¹ Does not include commercial broilers.² United States census as of Apr. 1.³ United States census as of Jan. 1.⁴ Preliminary.

Bureau of Agricultural Economics.

TABLE 582.—Chickens: Farm production, disposition, cash receipts, and gross income, by States, 1950¹

State and division	Number							Pounds			Price per pound	Value of chickens pro- duced	Cash receipts (sales)	Value of chickens con- sumed on farms ⁶	Gross income ⁷
	Raised ¹	Loss of mature birds ²	Pro- duced ³	Change in inventory ⁴		Con- sumed in farm house- hold ⁵	Sold	Pro- duced	Con- sumed in farm house- hold ⁵	Sold					
				Increase	Decrease										
	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	1,000 pounds	1,000 pounds	1,000 pounds	Cents	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars
Maine.....	5,883	547	5,336	73		299	4,964	28,695	1,495	26,806	25.0	7,174	6,702	374	7,076
New Hampshire.....	5,370	521	4,849		151	190	4,810	26,480	855	26,455	25.9	6,858	6,852	221	7,073
Vermont.....	1,619	164	1,454		127	186	1,395	7,960	986	7,672	25.9	2,062	1,987	255	2,242
Massachusetts.....	8,623	1,021	7,599	80		413	7,106	40,869	2,065	38,372	26.5	10,830	10,169	547	10,716
Rhode Island.....	1,046	106	940	13		57	870	4,700	285	4,350	26.2	1,231	1,140	75	1,215
Connecticut.....	5,964	714	5,270		85	317	5,038	25,823	1,553	24,686	26.5	6,843	6,542	412	6,954
New York.....	19,447	2,679	16,768	198		2,007	14,563	82,163	9,834	71,359	28.1	23,088	20,052	2,763	22,815
New Jersey.....	14,656	2,853	11,803	1,537		831	9,435	55,474	3,906	44,344	27.6	15,311	12,239	1,078	13,317
Pennsylvania.....	33,379	5,313	28,066	715		3,389	23,962	135,395	16,945	115,018	27.3	36,963	31,400	4,626	36,026
North Atlantic.....	96,006	13,921	82,085	2,253		7,689	72,143	407,559	37,924	359,062	27.0	110,360	97,083	10,351	107,434
Ohio.....	26,483	4,002	22,481	108		5,105	17,268	107,398	23,994	82,886	22.9	24,594	18,981	5,495	24,476
Indiana.....	23,002	3,164	24,838		240	4,530	20,548	114,021	18,573	96,578	21.7	24,743	20,957	4,030	24,987
Illinois.....	29,671	3,831	25,840		911	6,115	20,636	117,029	26,294	94,926	22.0	25,746	20,884	5,785	26,669
Michigan.....	18,690	2,191	16,499		429	2,756	14,172	80,845	13,504	69,443	24.7	19,969	17,152	3,335	20,487
Wisconsin.....	21,458	2,783	18,675		530	3,848	15,357	84,037	17,316	69,106	23.0	19,329	15,894	3,983	19,877
East North Central.....	124,304	15,971	108,333		2,002	22,354	87,981	503,330	99,681	412,937	22.7	114,381	93,868	22,628	116,496
Minnesota.....	30,124	4,139	25,985		670	5,384	21,271	117,916	23,151	97,847	17.1	20,164	16,732	3,959	20,691
Iowa.....	45,719	5,173	40,246		1,117	6,821	34,542	190,452	30,012	165,802	19.2	36,567	31,834	5,762	37,596
Missouri.....	29,234	3,036	26,198		1,501	7,751	19,948	112,760	27,904	91,761	20.7	23,341	18,995	5,776	24,771
North Dakota.....	6,142	925	5,217		243	1,635	3,825	23,344	6,867	17,595	19.3	4,505	3,396	1,325	4,721
South Dakota.....	12,988	1,717	11,271		372	2,531	9,112	51,455	10,377	42,826	17.3	8,902	7,409	1,795	9,204
Nebraska.....	22,249	2,439	19,810		607	4,938	15,479	86,182	19,258	69,656	17.4	14,996	12,120	3,351	15,471
Kansas.....	21,729	2,782	18,947		858	6,115	13,690	77,192	22,014	58,867	16.7	12,891	9,831	3,676	13,507
West North Central.....	168,185	20,511	147,674		5,368	35,175	117,867	659,301	139,583	544,354	18.4	121,366	100,317	25,644	125,961

Delaware.....	1,640	216	1,424	58	240	1,242	6,360	1,032	5,589	27.4	1,743	1,531	283	1,814
Maryland.....	5,539	753	4,786	172	1,213	3,745	21,531	5,095	17,227	26.6	5,727	4,582	1,355	5,937
Virginia.....	10,758	1,638	9,120	184	5,342	3,962	37,209	18,697	19,414	23.8	8,856	4,621	4,450	9,071
West Virginia.....	4,678	690	3,988	426	1,730	2,684	17,306	6,920	12,346	24.6	4,257	3,037	1,702	4,739
North Carolina.....	17,549	2,355	15,194	1	8,992	6,201	57,582	29,674	27,904	22.4	12,898	6,250	6,647	12,897
South Carolina.....	7,824	1,148	6,676	196	5,410	1,462	23,838	18,394	6,287	25.8	6,150	1,622	4,746	6,368
Georgia.....	12,440	1,786	10,654	87	6,754	3,987	36,823	21,613	15,549	24.9	9,169	3,872	5,382	9,254
Florida.....	5,149	828	4,321	40	1,326	3,035	15,025	4,243	10,926	28.7	4,312	3,136	1,218	4,354
South Atlantic.....	65,577	9,414	56,163	1,162	31,007	26,318	215,674	105,668	115,242	24.9	53,112	28,651	25,783	54,434
Kentucky.....	16,839	1,887	14,952	1,096	7,919	8,129	60,067	27,716	37,393	19.7	11,833	7,366	5,460	12,826
Tennessee.....	15,640	1,763	13,877	1,275	6,462	8,690	53,760	22,617	36,498	19.7	10,591	7,190	4,456	11,646
Alabama.....	12,600	1,636	10,964	370	6,344	4,990	36,243	17,763	19,960	23.2	8,408	4,631	4,121	8,752
Mississippi.....	11,468	1,581	9,887	533	5,529	4,891	31,723	16,034	17,608	25.0	7,931	4,402	4,008	8,410
Arkansas.....	11,665	1,166	10,499	370	4,262	6,607	38,784	13,212	27,089	20.5	7,951	5,553	2,708	8,261
Louisiana.....	8,253	1,099	7,154	209	4,663	2,760	27,469	17,253	11,040	28.0	7,688	3,091	4,831	7,922
Oklahoma.....	14,550	1,858	12,692	765	4,717	8,740	47,466	15,566	34,960	17.8	8,449	6,223	2,771	8,994
Texas.....	31,292	4,898	26,424	1,544	10,866	17,102	88,607	32,598	61,567	21.8	19,316	13,422	7,106	20,528
South Central.....	122,307	15,798	106,509	6,162	50,762	61,909	384,107	162,759	246,115	21.1	82,167	51,878	35,461	87,339
Montana.....	3,360	391	2,969	179	1,056	2,092	12,450	4,224	8,996	26.2	3,262	2,357	1,107	3,464
Idaho.....	3,238	427	2,811	118	1,030	1,899	11,600	4,120	7,976	22.9	2,656	1,827	943	2,770
Wyoming.....	1,227	139	1,088	22	388	722	4,236	1,436	2,888	28.0	1,186	809	402	1,211
Colorado.....	5,115	584	4,531	311	1,443	3,399	18,000	5,339	13,936	20.0	3,600	2,787	1,068	3,855
New Mexico.....	1,535	243	1,292	88	589	791	4,568	1,826	3,085	21.7	991	669	396	1,065
Arizona.....	994	133	861	13	232	616	3,328	812	2,464	28.7	955	707	233	940
Utah.....	3,986	634	3,352	124	413	3,063	12,866	1,404	11,946	20.7	2,663	2,473	291	2,764
Nevada.....	344	43	301	2	95	204	1,205	361	836	27.3	329	228	99	327
Washington.....	7,862	884	6,978	111	1,575	5,514	30,613	6,300	24,813	22.3	6,827	5,533	1,405	6,938
Oregon.....	5,463	760	4,703	198	1,114	3,787	21,188	4,679	17,420	22.6	4,788	3,937	1,067	4,994
California.....	25,627	4,684	20,943	315	3,026	18,232	83,445	9,986	74,751	23.9	19,943	17,865	2,387	20,252
Western.....	58,751	8,922	49,829	1,451	10,961	40,319	203,499	40,487	169,111	23.2	47,200	39,192	9,398	48,680
United States.....	635,130	84,537	550,593	13,892	157,948	406,537	2,373,470	586,102	1,846,821	22.3	528,586	410,989	129,255	540,244

¹ Does not include commercial broiler production.

² Total chicks hatched less death loss of chicks and young chickens during the year.

³ Death loss during the year of mature chickens on hand Jan. 1.

⁴ Chickens raised less death loss during the year of mature chickens on hand Jan. 1.

⁵ Change in Jan. 1 inventory numbers during the year.

⁶ Chickens consumed in households of farm producers.

⁷ Value of sales plus value of those consumed in households of producers.

Bureau of Agricultural Economics.

TABLE 583.—Chickens: Farm production, disposition, cash receipts, and gross income, by States, 1951¹

State and division	Number							Pounds			Price per pound	Value of chickens pro- duced	Cash receipts (sales)	Value of chickens con- sumed on farms *	Gross income *
	Raised :	Loss of mature birds :	Pro- duced :	Change in inventory :		Con- sumed in farm house- hold :	Sold	Pro- duced	Con- sumed in farm house- hold :	Sold					
				Increase	Decrease										
	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	Thou- sands	1,000 pounds	1,000 pounds	1,000 pounds	Cents	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars
Maine.....	6,471	594	5,877	471	.....	269	5,137	32,189	1,345	28,254	28.5	9,174	8,052	383	8,435
New Hampshire.....	5,477	439	5,038	114	.....	186	4,738	26,589	874	25,111	28.8	7,658	7,232	252	7,484
Vermont.....	1,877	136	1,741	21	.....	193	1,527	9,498	984	8,398	29.8	2,830	2,503	293	2,706
Massachusetts.....	8,795	923	7,872	30	.....	376	7,466	42,358	1,880	40,316	30.6	12,962	12,337	575	12,912
Rhode Island.....	1,046	96	950	13	.....	57	880	4,929	285	4,576	30.2	1,489	1,382	86	1,468
Connecticut.....	7,480	621	6,859	94	.....	307	6,458	35,545	1,474	33,582	30.1	10,699	10,108	444	10,552
New York.....	22,364	2,413	19,951	925	.....	1,887	17,139	101,751	9,624	87,409	30.8	31,339	28,922	2,964	29,886
New Jersey.....	16,854	2,901	13,953	1,345	.....	873	11,735	68,108	4,016	57,502	31.0	21,113	17,826	1,245	19,071
Pennsylvania.....	38,386	5,983	32,403	839	.....	3,355	28,209	162,350	17,110	141,045	30.0	48,705	42,314	5,133	47,447
North Atlantic.....	108,750	14,106	94,644	3,852	.....	7,503	83,289	483,317	37,592	426,193	30.2	145,969	128,676	11,375	140,051
Ohio.....	27,013	3,659	23,354	1,136	.....	5,258	16,960	112,857	24,187	83,104	26.4	29,794	21,939	6,385	28,324
Indiana.....	27,442	3,120	24,322	549	.....	4,802	18,971	110,952	19,208	89,164	24.9	27,627	22,202	4,783	26,985
Illinois.....	29,988	4,108	25,880	245	.....	6,178	19,439	116,485	25,939	89,419	24.3	28,306	21,729	6,303	28,032
Michigan.....	19,811	2,109	17,702	225	.....	2,921	14,556	85,554	14,605	69,869	28.2	24,126	19,703	4,119	23,822
Wisconsin.....	21,887	2,837	19,050	.....	85	4,040	15,095	85,726	18,180	67,928	24.4	20,917	16,574	4,436	21,010
East North Central.....	126,121	15,833	110,288	2,070	.....	23,197	85,021	511,574	102,119	399,484	25.6	130,770	102,147	26,026	128,173
Minnesota.....	30,726	4,283	26,443	.....	185	4,576	22,052	117,621	19,219	99,234	19.4	22,818	19,251	3,728	22,979
Iowa.....	44,805	5,283	39,522	344	.....	6,616	32,562	186,398	28,449	156,298	21.0	39,144	32,823	5,974	38,797
Missouri.....	30,988	3,431	27,557	.....	155	7,286	20,426	115,422	26,230	89,874	23.4	27,009	21,031	6,138	27,169
North Dakota.....	7,125	874	6,251	252	.....	1,749	4,250	28,330	7,171	19,975	20.4	5,779	4,075	1,463	5,538
South Dakota.....	14,547	1,560	12,987	413	.....	2,607	9,967	58,437	10,689	45,848	19.3	11,278	8,849	2,063	10,912
Nebraska.....	23,361	2,330	21,031	217	.....	5,185	15,629	89,426	19,703	68,768	20.3	18,153	13,960	4,000	17,960
Kansas.....	22,598	2,757	19,841	264	.....	6,115	13,462	81,036	22,014	57,887	19.9	16,126	11,520	4,381	15,901
West North Central.....	174,150	20,518	153,632	1,150	.....	34,134	118,348	676,670	133,475	537,884	20.7	140,307	111,509	27,747	130,256

Delaware	1,689	225	1,464	26	247	1,191	6,514	1,037	5,360	27.8	1,811	1,490	288	1,778
Maryland	5,539	682	4,857	34	1,128	3,695	21,891	4,738	16,997	29.1	6,370	4,946	1,379	6,325
Virginia	11,081	1,783	9,298	187	5,342	3,769	37,686	18,697	18,091	26.3	9,911	4,758	4,917	9,675
West Virginia	4,678	739	3,939	162	1,644	2,457	16,903	6,576	11,056	26.2	4,429	2,897	1,723	4,620
North Carolina	18,251	2,603	15,648	925	8,992	5,731	59,626	29,674	25,790	25.9	15,443	6,680	7,686	14,366
South Carolina	8,606	1,205	7,401	329	5,572	1,500	25,338	18,388	5,700	28.1	7,120	1,602	5,167	6,769
Georgia	12,316	1,766	10,550	269	7,024	3,257	37,286	22,477	13,679	27.0	10,067	3,693	6,069	9,762
Florida	5,509	890	4,619	178	1,220	3,221	16,385	4,148	11,596	29.1	4,768	3,374	1,207	4,581
South Atlantic	67,669	9,893	57,776	1,786	31,169	24,821	221,629	105,735	108,269	27.2	59,919	29,440	28,436	57,876
Kentucky	16,502	1,712	14,790	2	8,236	6,552	58,150	28,002	30,139	24.9	14,479	7,505	6,972	14,477
Tennessee	15,796	1,851	13,945	27	6,462	7,456	54,045	22,617	31,315	23.4	12,647	7,328	5,292	12,620
Alabama	12,978	1,640	11,338	133	6,344	4,861	36,740	17,763	18,472	25.2	9,258	4,645	4,476	9,121
Mississippi	11,697	1,548	10,149	39	5,087	5,101	33,991	15,261	18,874	26.8	9,110	5,058	4,090	9,148
Arkansas	11,898	1,111	10,787	89	4,347	6,529	38,801	13,041	26,116	23.0	8,924	6,007	2,999	9,006
Louisiana	8,005	997	7,008	4	4,663	2,341	26,167	16,787	9,364	29.1	7,615	2,725	4,885	7,610
Oklahoma	14,986	1,803	13,183	363	5,142	8,404	47,814	16,454	32,776	22.0	10,519	7,211	3,620	10,831
Texas	31,605	5,471	26,134	197	10,649	15,288	86,145	31,947	53,508	23.2	19,986	12,414	7,412	19,826
South Central	123,467	16,133	107,334	128	50,930	56,532	381,853	161,872	220,564	24.0	92,538	52,893	39,746	92,639
Montana	3,830	391	3,439	69	1,024	2,346	14,239	4,096	9,853	27.0	3,845	2,660	1,106	3,766
Idaho	3,400	438	2,962	55	1,030	1,877	11,939	4,017	7,696	25.8	3,080	1,986	1,036	3,022
Wyoming	1,202	135	1,067	9	427	649	4,289	1,665	2,661	25.1	1,077	668	418	1,066
Colorado	5,933	586	5,347	35	1,457	3,855	20,561	5,891	15,034	23.2	4,770	3,488	1,251	4,739
New Mexico	1,489	203	1,286	2	560	728	4,550	1,792	2,766	22.5	1,024	622	403	1,025
Arizona	944	156	788	61	251	598	2,972	878	2,332	30.0	892	700	263	963
Utah	4,584	579	4,005	72	425	3,508	14,376	1,488	12,629	24.1	3,465	3,044	359	3,403
Nevada	378	43	335	2	104	229	1,309	385	916	29.6	387	271	114	385
Washington	9,434	960	8,474	331	1,701	6,442	35,250	6,804	27,056	26.5	9,341	7,170	1,803	8,973
Oregon	5,900	828	5,072	161	1,081	3,830	22,391	4,432	17,235	25.7	5,754	4,429	1,139	5,568
California	29,215	4,852	24,363	1,458	2,723	20,182	99,874	8,986	84,764	26.5	26,467	22,462	2,381	24,843
Western	66,309	9,171	57,138	2,111	10,783	44,244	231,750	39,934	182,942	26.0	60,102	47,500	10,373	57,773
United States	666,466	85,654	580,812	10,841	157,716	412,255	2,506,793	580,727	1,875,336	25.2	629,605	472,165	143,603	615,768

¹ Does not include commercial broiler production.

² Total chicks hatched less death loss of chicks and young chickens during the year.

³ Death loss during the year of mature chickens on hand Jan. 1.

⁴ Chickens raised less death loss during the year of mature chickens on hand Jan. 1.

⁵ Change in Jan. 1 inventory numbers during the year.

⁶ Chickens consumed in households of farm producers.

⁷ Value of sales plus value of those consumed in households of producers.

Bureau of Agricultural Economics.

EXHIBIT "31"

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CHICKENS

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Chickens: Distribution of birds in National Poultry Improvement Plan hatchery supply flocks by breed and variety, 1941-51 and comparisons for matched States, 1946 and 1951

Year beginning July	States reporting	Total birds	New Hampshire	Single Comb White Leghorn	White Wyandotte	Barred Plymouth Rock	Rhode Island Red	White Wyandotte	Cross-mated	Other	Total
	Number	Number	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
1941.....	33	10,712,027	21.2	24.1	15.6	16.2	12.7	3.1	2.0	5.2	100.0
1942.....	40	15,780,980	19.2	26.6	18.3	15.7	8.9	2.8	3.0	5.5	100.0
1943.....	42	20,331,999	19.4	25.9	19.7	13.9	8.3	2.6	5.5	4.7	100.0
1944.....	39	17,574,321	20.6	25.8	17.5	12.4	5.0	2.3	9.8	3.7	100.0
1945.....	32	20,276,904	23.8	23.1	17.0	11.4	7.7	2.0	11.3	3.7	100.0
1946.....	38	24,490,346	23.4	25.4	17.4	10.0	6.5	2.0	11.1	4.2	100.0
1947.....	42	25,118,247	25.9	24.7	15.2	10.2	6.8	1.7	12.4	3.1	100.0
1948.....	44	26,458,372	31.9	25.7	13.2	7.8	5.6	1.3	11.9	2.6	100.0
1949.....	47	36,195,375	38.8	21.9	10.4	6.3	4.3	1.0	15.1	2.2	100.0
1950.....	47	33,804,603	38.9	21.6	10.1	5.8	4.1	.9	16.4	2.2	100.0
1951.....	47	37,559,597	41.4	18.9	11.9	4.0	3.3	.6	17.7	2.2	100.0

COMPARISONS FOR MATCHED STATES:

1946.....	38	24,490,346	23.4	25.4	17.4	10.0	6.5	2.0	11.1	4.2	100.0
1951.....	38	32,758,233	40.3	18.2	12.6	3.5	3.1	.7	19.4	2.2	100.0

¹ Data on cross-mated flocks are not truly indicative of the situation since in several States birds in such flocks are reported under the respective purebred heading and in some States those flocks are cross-mated only for a portion of the year to produce broilers; for the remainder of the year they are mated as purebreds for the production of purebred chicks.

² To show the trend in popularity of birds during the past 5 years, data from 38 States which reported in both 1946 and 1951 are given. States not included are: California, Colorado, Connecticut, Maryland, Nevada, New Mexico, New York, Oregon, Tennessee, and West Virginia.

Bureau of Animal Industry.

TABLE 588.—Chickens: Commercial broiler production, and gross income, United States, 1934-51¹

Year	Production		Price per pound	Gross income ²	Year	Production		Price per pound	Gross income ²
	Number	Pounds				Number	Pounds		
	Thousands	1,000 pounds	Cents	1,000 dollars		Thousands	1,000 pounds	Cents	1,000 dollars
1934.....	34,030	96,662	19.3	18,694	1943.....	285,293	832,837	28.6	238,262
1935.....	42,890	122,884	20.1	24,651	1944.....	264,999	790,346	28.7	227,104
1936.....	53,155	152,447	20.7	31,493	1945.....	365,572	1,107,174	29.5	327,059
1937.....	67,915	195,916	21.4	41,876	1946.....	292,527	883,855	32.7	288,603
1938.....	82,420	239,508	19.0	45,609	1947.....	310,168	936,442	32.3	302,170
1939.....	105,630	306,272	17.0	52,059	1948.....	370,515	1,126,643	36.0	405,171
1940.....	142,762	414,074	17.3	71,729	1949.....	513,296	1,570,197	28.2	442,530
1941.....	191,502	559,605	18.4	103,111	1950.....	630,816	1,938,000	27.4	530,147
1942.....	228,187	674,087	22.9	154,650	1951.....	791,878	2,419,104	28.5	690,486

¹ By commercial broiler is meant young chickens of the heavy breeds to be marketed at from 2 to 5 pounds live weight and from which no pullets are kept for egg production. These figures are not included in farm production of chickens.

² Includes value of consumption in households of producers, which is less than 1 percent of total production.

Bureau of Agricultural Economics.

EXHIBIT "32"

UNITED STATES DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION
POULTRY BRANCH

REGULATIONS GOVERNING THE GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF
AND UNITED STATES CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

(Reprinted from the Federal Register of June 5, 1951, April 24, 1952, February 4, and April 14, 1953)

Washington 25, D. C.

Effective May 15, 1953.

The regulations hereinafter promulgated as Part 70 of the Code of Federal Regulations are pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act, 1951 (Pub. Law 759, 81st Cong., approved September 6, 1950), and will supersede the currently effective provisions of Part 70. The amendment hereinafter promulgated is pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act of 1952 (Pub. Law 135, 82d Cong., approved Aug. 31, 1951).

The amendment prohibits the grade labeling of individual carcasses of dressed poultry after June 30, 1953; permits under certain conditions the grading and inspection of dressed poultry produced in Canadian registered poultry dressing stations; makes minor changes in the class names of turkeys and in the standards for quality of poultry; modifies certain provisions in the sanitary requirements; and makes minor changes in several other sections of the regulations to more clearly set forth the intent of those sections.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notices, the amendment hereinafter set forth is promulgated to become effective upon publication in the Federal Register.

The regulations which were issued July 1, 1951 and amended April 24, 1952, March 4, 1953 and May 15, 1953 are herein reprinted as amended.

The amended regulations are as follows:

PART 70—GRADING AND INSPECTION OF
POULTRY AND EDIBLE PRODUCTS
THEREOF; AND UNITED STATES CLASSES,
STANDARDS, AND GRADES WITH RESPECT
THERETO

SUBPART A—RULES GOVERNING THE GRADING
AND INSPECTION OF POULTRY AND EDIBLE
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AUTHORITY: §§ 70.1 to 70.105 issued under sec. 205, 60 Stat. 1090, Pub. Law 759, 81st Cong., 7 U. S. C. 1624.

SUBPART A—GRADING AND INSPECTION OF
POULTRY AND EDIBLE PRODUCTS THEREOF

DEFINITIONS

§ 70.1 Definitions. Unless the context otherwise requires, the following terms shall have the following meaning:

(a) "Act" means the following provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act of 1951 (Pub. Law 759, 81st Cong., approved September 6, 1950), or any other act of Congress conferring like authority:

AGRICULTURAL MARKETING ACT OF 1946

... to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices

To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality products which they desire

DEPARTMENT OF AGRICULTURE APPROPRIATION
ACT, 1951

• • • **Market inspection of farm products:** For the investigation and certification, in one or more jurisdictions, to shippers and other interested parties of the class, quality, and condition of any agricultural commodity or food product, whether raw, dried, canned, or otherwise processed, and any product containing an agricultural commodity or derivative thereof when offered for interstate shipment or when received at such important central markets as the Secretary may from time to time designate, or at points which may be conveniently reached therefrom under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered.

Marketing farm products: For acquiring and diffusing among the people of the United States useful information relative to the needed supplies, standardization, classification, grading, preparation for market, handling, transportation, storage, and marketing of farm and food products, including the demonstration and promotion of the use of uniform standards of classification of American farm and food products throughout the world.

(b) "Acceptable" means suitable for the purpose intended and acceptable to the Administration.

(c) "Administration" means the Production and Marketing Administration of the Department.

(d) "Administrator" means the Administrator of the Production and Marketing Administration of the Department, or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(e) "Applicant" means any interested party who requests any inspection service or grading service.

(f) "Carcass" means any poultry carcass.

(g) "Circuit supervisor" means the officer in charge of the poultry inspection service in a circuit consisting of a group of stations within an area.

(h) "Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind or between species.

(i) "Condition" means any condition, including but not being limited to, the state of preservation, cleanliness, or soundness of any product; or any condition, including but not limited to, the processing, handling, or packaging which affects such product.

(j) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.

(k) "Department" means the United States Department of Agriculture.

(l) "Dressed poultry" means poultry which has been slaughtered for human food with head, feet, and viscera intact and from which the blood and feathers have been removed.

(m) "Edible poultry byproduct" means any giblets or any edible part of dressed poultry other than eviscerated poultry.

(n) "Edible product" means any product other than live poultry and dressed poultry.

(o) "Food product containing poultry product" means any article of food for human consumption which is prepared in part from any edible portion of dressed

poultry or from any product derived wholly from such edible portion, if such edible portion or product does not comprise a substantial portion of such article of food.

(p) "Free from protruding pinfeathers" means that the carcass is free from protruding pinfeathers which are visible to an inspector or grader during an examination of the carcass at normal operating speeds. However, a carcass may be considered as being free from protruding pinfeathers if it has a generally clean appearance and if not more than an occasional pinfeather is in evidence (other than on the breast) during a more careful examination of the carcass.

(q) "Giblets" means the liver from which the bile sac has been removed, the heart from which the pericardial sac has been removed, and the gizzard from which the lining and contents have been removed: *Provided*, That each such organ has been properly trimmed and washed.

(r) "Grader" means any employee of the Department authorized by the Secretary, or any other individual to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the regulations in this part, the class, quality, quantity, and condition of products.

(s) "Grading" or "grading service" means: (1) The act whereby a grader determines, according to the regulations in this part, the class, quality, quantity, or condition of any product by examining each unit thereof, or each unit of the representative sample thereof drawn by a grader, and issues a grading certificate with respect thereto; (2) in addition to the foregoing, the act whereby the grader identifies, according to the regulations in this part, the graded product; (3) with respect to an official plant, the act whereby a grader determines that the products in such plant are processed, handled, and packaged in accordance with § 70.39; and (4) any regrading or any appeal grading of a previously graded product.

(t) "Grading certificate" means a statement, either written or printed, issued by a grader, pursuant to the regulations in this part, relative to the class, quality, quantity, or condition of a product.

(u) "Identify" means to apply official identification to products or the containers thereof.

(v) "Inspected and certified" or "certified" means, with respect to any product, that it has undergone an inspection and was found, at the time of such inspection, to be sound, wholesome, and fit for human food.

(w) "Inspection", "inspection service", or "inspection of products for condition and wholesomeness" means any inspection by an inspector to determine, in accordance with the regulations in this part, (1) the condition and wholesomeness of dressed poultry, or (2) the condition and wholesomeness of any edible product at any stage of the preparation or packaging thereof in the official plant where inspected and certified, or (3) the condition and wholesomeness of any previously inspected and certified product if such product has not lost its identity as an inspected and certified product. In addition to the foregoing, the terms "inspection" and "inspection service" shall each mean any inspection by an

inspector to determine, in accordance with the regulations in this part, (1) the condition of dressed poultry as it applies to the processing, handling or packaging of such product, or (2) any ante-mortem examination of poultry.

(x) "Inspection certificate" means a statement, either written or printed, issued by an inspector, pursuant to the regulations in this part, relative to the condition and wholesomeness of products.

(y) "Inspector" means any person who is licensed by the Secretary to investigate and certify in accordance with the regulations in this part, the condition and wholesomeness of products or the condition of dressed poultry. An inspector is an employee of the Department or of a State; he may be a graduate veterinarian or a layman.

(z) "Interested party" means any person financially interested in a transaction involving any inspection or grading.

(aa) "National supervisor" means (1) the officer in charge of the poultry inspection service of the Administration, (2) the officer in charge of the poultry grading service of the Administration, and (3) such other officers or employees of the Department who may be so designated by the officer in charge of the poultry inspection and grading service of the Administration.

(bb) "Office of grading" means the office of any grader.

(cc) "Official identification" means the symbol represented by a stamp, label, seal, or other device approved by the Administrator and affixed to any product, or to any container thereof, stating that the product was inspected or graded or both. The class, quality or condition of such product as determined by a grader may be indicated in the "official identification".

(dd) "Official plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for operation under inspection or grading service and in which inspection or grading is carried on in accordance with the regulations in this part.

(ee) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(ff) "Potable water" means water which complies with the U. S. Public Health Service drinking water standards.

(gg) "Poultry" means any kind of domesticated bird, including, but not being limited to chickens, turkeys, ducks, geese, pigeons, and guineas.

(hh) "Poultry food product" means any article of human food or any article intended for or capable of being so used which is prepared or derived in whole or in substantial part, from any edible portion of dressed poultry.

(ii) "Poultry grading and inspection service" means the personnel who are actively engaged in the administration, application, and direction of poultry grading and inspection programs and services pursuant to the regulations in this part.

(jj) "Product" means each of the following: (1) Dressed poultry; (2) ready-to-cook poultry; (3) edible poultry byproduct; (4) poultry food product; and (5) with respect to grading service only, live poultry.

(kk) "Quality" means the inherent properties of any product which determines its relative degree of excellence.

(ll) "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be) head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry prepared as described in this paragraph.

(mm) "Regional supervisor" means any employee of the Department in charge of poultry grading service or poultry inspection service in a designated geographical area.

(nn) "Regulations" means the provisions of this entire part and such United States classes, standards, and grades for products as may be in effect at the time grading or inspection is performed.

(oo) "Secretary" means the Secretary of the Department, or any other officer or employee of the Department to whom there has heretofore been delegated or to whom there may hereafter be delegated, the authority to act in his stead.

(pp) "Soundness" means freedom from external evidence of any disease or condition which may render a carcass unfit for food.

(qq) "State supervisor" means any authorized and designated individual who is in charge of the poultry grading service or the poultry inspection service in a State. A State supervisor of poultry inspection service shall be a veterinarian and he is either a Federal-State employee or a Federal employee.

(rr) "Station supervisor" means any authorized individual who is designated to supervise the poultry grading service or the poultry inspection service in a large official plant or in a group of several smaller plants.

ADMINISTRATION

§ 70.2 *Administration.* The Administrator shall perform for and under the supervision of the Secretary, such duties as are prescribed in the regulations in this part and as the Secretary may require in the administration of the regulations in this part.

GENERAL

§ 70.3 *Grading and inspection services available.* The regulations in this part provide for the following kinds of service; and any one or more of the different services, applicable to official plants, may be rendered in an official plant:

- (a) *Grading of live poultry.*
- (b) *Certification of dressed poultry produced under sanitary requirements in official plants.*
- (c) *Grading of dressed poultry.* (1) In an official plant.
- (2) At terminal markets and other receiving points.
- (d) *Inspection of dressed poultry in official plants for processing as ready-to-cook poultry.*
- (e) *Grading of ready-to-cook poultry.* (1) In an official plant.
- (2) At terminal markets and other receiving points.
- (f) *Inspection service in official canning plants.*

§ 70.4 *Basis of service.* (a) Any inspection service in accordance with the regulations in this part shall be for condition and wholesomeness but, with respect to dressed poultry, as such, the inspection may be for condition only.

(b) Any grading service in accordance with the regulations in this part shall be for class, quality, quantity, or condition or any combination thereof. Grading service with respect to determination of quality of products shall be on the basis of United States classes, standards, and grades as contained in Subpart B of the regulations in this part. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications and such service, when approved by the Administrator, shall be rendered on the basis of the specifications of such contract.

(c) Continuous grading service in an official plant other than the service provided in § 70.3 (b) may be rendered only when a majority of the graders' time each month is utilized in performing grading for quality on the basis of the United States standards set forth in Subpart B of the regulations in this part.

(d) All grading service and all inspection service shall be subject to supervision at all times by the applicable station supervisor, State supervisor, circuit supervisor, regional supervisor, and national supervisor. Such services shall be rendered where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders and inspectors are available.

(e) *Dressed poultry to be eligible for grading or inspection service shall have been processed in official plants.* Except as otherwise provided herein, only dressed poultry which was processed in an official plant in accordance with the regulations in this part, and dressed poultry which was processed in Canadian registered poultry dressing stations operated in accordance with such methods and procedures as are acceptable to the Administrator, may be graded or inspected in an official plant. Squabs and domesticated game birds (including, but not being limited to, quail, grouse, pheasants, and wild ducks and geese) which were not dressed in an official plant may be brought into an official plant for grading or inspection. In order to facilitate distribution thereof, dressed poultry from other than official plants may be brought into an official plant only in instances where the Administration can determine that such dressed poultry will be adequately segregated and its form and identity maintained until it is shipped from the official plant.

(f) *Inspection in official plants; extent required.* All dressed poultry that is eviscerated in an official plant where inspection service is maintained shall be processed in a sanitary manner; and no uninspected edible products or uninspected slaughtered rabbits may be brought into such plant. Dressed poultry may be eviscerated in such plant without inspection for condition and wholesomeness, but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate and effective segregation

of inspected and uninspected products is maintained, and an inspector or a governmentally employed grader is on duty, at all times when plant operations are carried on, for the purpose of (1) effecting adequate segregation of the inspected and uninspected product; (2) control of official inspection marks and grade marks, and (3) supervision of sanitation in the official plant.

(g) *Certification of dressed poultry produced under sanitary requirements.* With respect to any official plant, dressed poultry, as such, may be certified by a grader as having been processed, handled and packed in accordance with the minimum standards for sanitation, facilities, and operating procedures in official plants. However, in official plants which have available the services of an inspector who is authorized to inspect for condition and wholesomeness, such inspector is also authorized to certify dressed poultry, as such, as having been processed, handled, and packed in accordance with the minimum standards for sanitation, facilities, and operating procedures in official plants. Appropriate grading or inspection processing reports shall be issued with respect thereto as required by the regulations in this part. The bulk containers of such dressed poultry which has been certified as aforesaid, if to be officially identified, shall be marked for identification purposes as provided in § 70.11 (e). All of the poultry that is processed in such official plant as dressed poultry, shall be prepared in accordance with the regulations in this part and under the supervision of a grader or inspector.

(h) *Examination of ready-to-cook poultry which was not processed in official plants.* When approved by the Administrator, ready-to-cook poultry which was not processed in an official plant may be examined by a grader or inspector at terminal markets and other receiving points to determine (1) the type and condition of the containers of such poultry, (2) whether or not such poultry is in a frozen or fresh state, (3) the extent of visible damage in instances where the product has been subjected to rough and improper handling, and (4) the class and quantity of the product involved. Such poultry shall not be officially identified as a graded or inspected product.

§ 70.5 *Performance of services—(a) Licensed graders and inspectors.* (1) Any person who is a Federal or State employee possessing proper qualifications as determined by an examination for competency, and who is to perform grading service or inspection service may be licensed by the Secretary as a grader or an inspector.

(2) Any prospective grader, other than a Federal or State employee possessing proper qualifications as determined by an examination for competency and who is to perform grading service may be licensed by the Secretary as a grader. However, prior to granting of the license, he shall procure and deliver to the Administration a surety bond, issued by such surety as may be approved by the Administrator, in the amount of \$1,000 for the proper performance of the duties of such licensee under the regulations in this part.

(3) All licenses issued by the Secretary shall be countersigned by the officer in

charge of the poultry grading and inspection service of the Administration or any other designated official of such service.

(b) *Suspension of license or authority; revocation.* Pending final action by the Secretary, the officer in charge of the poultry grading and inspection service may, whenever he deems such action necessary, suspend any license or authority effective pursuant to the regulations in this part, by giving notice of such suspension to the respective individual involved, accompanied by a statement of the reasons therefor. Within seven days after the receipt of the aforesaid notice and statement of reasons by such individual, he may file an appeal, in writing, with the Secretary supported by any argument or evidence that he may wish to offer as to why his license or authority should not be suspended or revoked. After the expiration of the aforesaid seven-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed seven days the license is revoked.

(c) *Surrender of license.* Each license which is suspended, or revoked, or has expired shall promptly be surrendered by the licensee to his immediate superior. Upon termination of the services of a licensed grader or inspector the licensee shall promptly surrender his license to his immediate superior.

(d) *Identification.* Each grader and inspector shall have in his possession at all times, and present upon request while on duty, the means of identification furnished by the Department to such person.

(e) *Financial interest of inspectors and graders.* No inspector shall inspect and no grader shall grade for quality any product in which he is financially interested.

(f) *Political activity.* All graders and inspectors who are employees of the Department are forbidden during the period of their respective appointments, or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 70.6 Applying for grading service or inspection service—(a) *Who may obtain grading service or inspection service.* An application for grading service or inspection service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

(b) *How application may be made.* (1) An application for inspection service must be made in writing and filed with the Administrator.

(2) An application for grading service to be rendered in an official plant must be made in writing and filed with the Administrator.

(3) An application for any grading service to be rendered other than in an official plant may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally, in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom the application is made, or the Administrator may require that the application be confirmed in writing.

(4) Each application for grading service or inspection service shall include such information as may be required by the Administrator in regard to the products and premises where the service is to be rendered.

(c) *Filing of application.* An application for grading service or inspection service shall be regarded as filed only when made pursuant to the regulations in this part.

(d) *Authority of applicant.* Proof of the authority of any person applying for grading service or inspection service may be required at the discretion of the Administrator.

(e) *Application for inspection service or grading service in official plants; approval.* Any person desiring to process and pack products in a plant under grading service or inspection service, or both, must receive approval of such plant and facilities as an official plant prior to the rendition of such service. An application for grading service or inspection service to be rendered in an official plant shall be approved according to the following procedure:

(1) *Initial survey.* When application has been filed for grading service or inspection service, as aforesaid, the regional supervisor, or his assistant, shall examine the plant, premises, and facilities and shall specify any additional or necessary facilities required for the service. Appeals with respect to any such specification may be made to the national supervisor.

(2) *Drawings and specifications to be furnished in advance of construction or alterations.* Four copies of drawings, consisting of floor plans of space to be included in the official plant, showing the locations of such features as the principal pieces of equipment, floor drains, hand washing facilities, hose connections for clean-up purposes, cardinal points of the compass, and the routes of dressed poultry, and edible and inedible products through the plant, properly drawn to scale, shall be submitted to the regional supervisor. The official plant shall include toilet and dressing rooms, office space for the inspector and grader, store rooms for supplies used in the operations under inspection or grading, feeding rooms, and all rooms, compartments or passageways where products or any ingredients to be used in the preparation of products under inspection service or grading service will be handled or kept, and may include other rooms or compartments located in the buildings comprising the official plant. If rooms or compartments shown on the drawings are not to be included as part of the official plant this should be clearly indicated thereon. Specifications

covering the height of ceilings, types of principal pieces of equipment, character of floors, walls, and ceilings, lighting, ventilation, water supply, and drainage, and such other notations as may be required, shall accompany the drawings. Construction or remodeling of buildings, facilities, or premises should not be initiated without prior approval of the drawings. Upon approval of drawings and specifications the application for grading service or inspection service may be approved.

(3) *Final survey and plant approval.* Prior to the inauguration of the grading service, or inspection service, a final survey of the plant and premises shall be made by the regional supervisor or his assistant to determine if the plant is constructed and facilities are installed in accordance with the approved drawings, and the regulations in this part. The plant may be approved by the Administrator only when these requirements have been met, except that conditional approval for a specified limited time may be granted only under emergency conditions of restricted availability of facilities and construction materials, provided practices suitable to the Administrator are employed to effect adequate sanitary conditions in the plant.

(f) *Rejection of application.* Any application for grading or inspection service may be rejected by the Administrator (1) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (2) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (3) where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the benefits of the act to any person; or (4) where he determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading or inspection service. Each such applicant shall be notified promptly of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator within 10 days after notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant of the reasons for the rejection thereof.

(g) *Withdrawal of application.* Any application for grading or inspection service may be withdrawn by the applicant at any time before the service is performed upon payment by the applicant of all expenses incurred by the Administration in connection with such application.

(h) *Order of service.* Grading service or inspection service shall be performed, insofar as practicable, in the order in which application therefor is made except that precedence may be given to any application for an appeal inspection or appeal grading.

(4) *Suspension of plant approval.* Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for (1) failure to maintain plant and equipment in a satisfactory state of repair; (2) the use of operating procedures which are not in accordance with the regulations in this part; or (3) alterations of buildings, facilities, or equipment which cannot be approved in accordance with the regulations in this part.

During such period of suspension inspection and grading service shall not be rendered. However, the other provisions of the contract for service will remain in effect unless terminated in accordance with the terms thereof. If the plant facilities or methods of operation are not brought into compliance within a reasonable period of time, to be specified by the Administrator, the contract shall be terminated. Upon termination of any contract providing for inspection or grading service in an official plant pursuant to the regulations in this part, the plant approval shall also become terminated, and all labels, seals, tags or packaging material bearing official identification shall, under the supervision of a person designated by the Administration, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the Administration.

§ 70.7 *Denial of service.* (a) The following acts or practices may be deemed sufficient cause for the debarment of any person by the Administrator from any or all benefits of the act for a specified period after notice and opportunity for hearing has been accorded him:

(1) *Misrepresentation, deceptive, or fraudulent acts or practices.* Any wilful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of any application for any grading service or inspection service, appeal or regrading service;

(ii) The making of the product accessible for grading or inspection;

(iii) The use of any grading certificate or inspection certificate issued pursuant to the regulations in this part or the use of any official stamp, label, or identification;

(iv) The use of the terms "United States," or "U. S." in conjunction with the grade of the product;

(v) The use of any of the aforesaid terms or an official stamp, label, or identification in the labeling or advertising of any product; or

(vi) The use of the terms "Government graded," "Federal-State graded," "U. S. inspected," "Government inspected," or terms of similar import in the labeling or advertising of any product.

(2) *Use of facsimile forms.* The unauthorized use of a form which simulates in whole or in part any official certificate, stamp, label, or identification authorized to be issued or used under the regulations in this part to evidence the inspection or grade of any product.

(3) *Wilful violation of the regulations.* Any wilful violation of the regulations in this part.

(4) *Interfering with a grader or inspector.* Any interference with or obstruction of any grader or inspector in the performance of his duties by intimidation, threat, bribery, assault or any other improper means.

(5) *Misleading labeling.* The use of the terms "Government graded," "Federal-State graded," or terms of similar import in the labeling of any product without stating in the label the U. S. grade of the product as determined by an authorized grader.

(6) *Miscellaneous.* The existence of any of the conditions set forth in § 70.6 (f) constituting a basis for the rejection of an application for grading or inspection service.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has flagrantly or repeatedly committed any of the acts or practices specified in paragraph (a) of this section, he may without hearing, direct that the benefits of the act be denied such person pending investigation and hearing. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall reinstate the benefits of the act or notify the petitioner of the reasons for continued interim denial.

§ 70.9 *Other applicable regulations.* Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State or municipal, applicable laws or regulations.

§ 70.10 *Publications.* Publications under the act and the regulations in this part shall be made in the Federal Register, the Service and Regulatory Announcements of the Department, and such other media as the Administrator may approve for the purpose.

§ 70.11 *Identifying and marking products—*

(a) *Approval of official identification.* Any label or packaging material which bears any official identification shall be used only in such manner as the Administrator may prescribe. No label or packaging material bearing official identification may be used unless finished copies or samples of such labels and packaging material have been approved by the Administrator. No label bearing the official identification shall be printed for use until the printer's final proof has been approved by the Administrator; and no label, other than labels for shipping containers or institutional packs, bearing any official identification shall be used until finished copies or samples of such labels have been approved by the Administrator. Final approval may be given to printer's final proof or photostatic copies of labels for shipping containers or containers for

institutional packs, and no such labels shall be used until such proofs or copies have been approved by the Administrator. A label which bears official identification shall not bear any statement that is false or misleading, and if labels in the name of the same packer or distributor, or bearing the same brand name, are used on the same or similar products which are prepared from products which are not inspected, the diameter of the inspection mark, or combination inspection and grading mark, used on labels for inspected products shall be equal to at least one-tenth of the length of the label, plus at least one-tenth of the width of the label. If the labeling is printed or otherwise applied directly on the container, the principal display panel of such container shall, for this purpose, be considered as the label.

(b) *Products that may be individually grade marked; information required on grade mark.* (1) Only ready-to-cook poultry of A, B, or C quality and dressed poultry of A or B quality may be individually identified with a grade mark. However, after June 30, 1953, only ready-to-cook poultry may be so identified.

(2) Except as otherwise authorized each grade mark which is to be used shall conspicuously indicate the U. S. grade of the product it identifies, and shall indicate the class or whether the bird is "young," or "mature" or "old," and shall include one of the following phrases: "Federal-State graded," "Government graded," or any other similar phrase approved by the Administrator. Such grade mark shall be contained within the outline of a shield of such design as may be approved by the Administrator.

(c) *Use of grade mark and inspection mark with respect to the same product.* The Administrator is authorized to prescribe and approve the form of the grade mark and inspection mark that may be used individually or in combination with respect to the same product.

(d) *Marking inspected products—*(1) *Wording and form of the inspection mark.* Except as otherwise authorized, the inspection mark permitted to be used with respect to inspected and certified edible products shall include wording as follows: "Inspected for wholesomeness by U. S. Department of Agriculture." This wording, in such form as the Administrator may prescribe or approve, shall be contained within a circle. The Administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark or approved abbreviation thereof, as the case may be, may be applied to the inspected and certified edible product or to the packaging material of such product. The inspection mark, or the approved abbreviation thereof, shall, when used on packaging material, be printed on such material or on a label to be affixed to the packaging material, and the name of the packer or distributor of such product must be legibly printed on the packaging material or label, as the case may be, excepting that on shipping

containers and containers for institutional packs the inspection mark may be stenciled on the container and when the inspection mark is so stenciled, the name and address of the packer or distributor may be applied by the use of a stencil or a rubber stamp.

(2) *Wording on labels.* Each trade label to be approved for use pursuant to this section with respect to any inspected and certified edible product shall bear the true name of the edible product, the name and address of the packer or distributor thereof, and, in prominent letters and figures of uniform size, the inspection mark, as aforesaid; and the label shall also bear, in such manner as may be prescribed or approved by the Administrator, the plant number, if any, of the official plant in which such product was inspected and certified.

(3) *Formulas required.* Copies of each trade label submitted for approval pursuant to this section shall, when the Administrator requires, be accompanied by a statement showing the kinds and percentages of the ingredients comprising the edible product with respect to which the label is to be used. Approximate percentages may be given in cases where the percentages of ingredients may vary from time to time, if the limits of variation are stated.

(4) *Wording permitted on food products containing poultry products.* Any trade label which is to be affixed to a container of any food product containing poultry product which is packed under the supervision of an inspector in any official plant may bear the phrase: "The poultry product contained herein has been inspected and certified at a plant where Federal inspection is maintained." Each such trade label shall also be subject to the applicable provisions of this section.

(5) *Labels in foreign languages.* Any trade label to be affixed to a container of any edible products for foreign commerce may be printed in a foreign language. However, the inspection mark shall appear on the label in English, but, in addition, may be literally translated into such foreign language. Each such trade label which is to be printed in a foreign language must be approved pursuant to this section.

(6) *Use of approved labels.* Trade labels approved for use pursuant to this section shall be used only for the purpose for which approved.

(e) *Marking dressed poultry which was certified as having been produced under sanitary requirements.* The Administrator is authorized to prescribe and approve the manner in which dressed poultry which was processed in accordance with minimum standards for sanitation, facilities, and operating procedures in official plants may be marked for identification purposes.

§ 70.12 *Supervision of marking and packaging—(a) Evidence of label approval.* No grader or inspector shall authorize the use of official identification for any graded or inspected product unless he has on file evidence that such official identification or packaging material bearing such official identification has been approved in accordance with the provisions of § 70.11.

(b) *Affixing of official identification.*

(1) No official identification or any abbreviation, copy or representation thereof may be affixed to or placed on or caused to be affixed to or placed on any product or container thereof except by a grader or an inspector or under the supervision of a grader or an inspector or other person authorized by the Administrator. All such products shall have been inspected and certified or graded or both. The grader or inspector shall have supervision over the use and handling of all material bearing any official identification.

(2) Each container of inspected and certified edible products to be shipped from one official plant to another official plant for further processing shall be marked for identification and shall show the following information:

(i) The name of the inspected and certified edible products in the container;

(ii) The name and address of the packer or distributor of such product;

(iii) The net weight of the container;

(iv) The inspection mark permitted to be used pursuant to the regulations in this part, unless the containers are sealed or otherwise identified in such manner as may be approved by the Administrator; and

(v) The plant number of the official plant where the products were packed.

(c) *Removal of official identification.* Official plants which receive dressed poultry or ready-to-cook poultry in containers which bear any official identification shall remove or deface such official identification upon removal of such poultry from the containers.

(d) *Packaging.* No container which bears or may bear an inspection mark or any abbreviation or copy or representation thereof may be filled in whole or in part except with edible products which were inspected and certified and are at the time of such filling, sound, wholesome and fit for human food. All such filling of containers shall be under the supervision of an inspector or grader.

§ 70.13 *Retention labels.* An inspector or grader may use such labels, devices and methods as may be approved by the Administrator for the identification (a) of products which are held for further examination, and (b) all equipment and utensils which are to be held for proper cleaning.

§ 70.14 *Prerequisites to grading and inspection.* Grading and inspection of products shall be rendered pursuant to the regulations in this part and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

§ 70.15 *Accessibility of products.* Each product for which grading service or inspection service is requested shall be so placed as to disclose fully its class, quality, quantity, and conditions as the circumstances may warrant.

§ 70.16 *Time of grading or inspection in an official plant.* The grader or inspector who is to perform the grading or inspection in an official plant shall be in-

formed, in advance, of the hours when such grading or inspection will be required. Graders and inspectors shall have access at all times to every part of any official plant to which they are assigned.

§ 70.17 *Report of inspection work and grading work.* Reports of the work of inspection and grading carried on within official plants shall be forwarded to the Administrator by the inspector and grader in such manner as may be specified by the Administrator.

(a) *Information to be furnished to inspectors and graders.* When inspection service or grading service is performed within an official plant, the applicant for such inspection or grading shall furnish to the inspector or grader rendering such service such information as may be required for the purposes of this section.

(b) *Reports of violations.* Each inspector and each grader shall report, in the manner prescribed by the Administrator, all violations of and noncompliance with the act and the regulations in this part of which he has knowledge.

§ 70.18 *Fees and charges—(a) Payment of fees and charges.* (1) Fees and charges for any grading or inspection shall be paid by the applicant for the service in accordance with the applicable provisions of this section and, if so required by the Administrator, such fees and charges shall be paid in advance.

(2) Fees and charges for any grading or inspection performed by any grader or inspector who is a salaried employee of the Department shall, unless otherwise required pursuant to subparagraph (3) of this paragraph, be paid by check, draft, or money order payable to the Treasurer of the United States and remitted promptly to the Administration.

(3) Fees and charges for any grading or inspection pursuant to a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

(b) *Grading service on a fee basis.* (1) Unless otherwise provided the fees to be charged and collected for any grading service (other than for an appeal grading) on a fee basis shall be based on the applicable rates specified in paragraph (d) of this section.

(2) In the event the aforesaid applicable rates specified in paragraph (d) of this section are deemed by the Administrator to be inadequate fully to reimburse the Administration for all costs and other items paid or incurred by the Administration in connection with such service, the fees for such service shall not be based on the rates specified in paragraph (d) of this section, but shall be based on the time required to perform such service and the travel of each grader at the rate of \$3.60 per hour for the time actually required.

(3) If an applicant requests that any grading service be performed on a holiday or a non-work day, he may be charged for such service at a rate one and one-half times the rate which would be applicable for such service if performed on a day other than a holiday or non-work day.

(c) *Fees for appeal grading.* The fees to be charged for any appeal grading shall be double the fee specified in the grading certificate from which the appeal is taken: *Provided*, That the fee for any appeal grading requested by the United States, or any agency or instrumentality thereof, shall be not more than that set forth in the grading certificate from which the appeal is taken. If the fee on the certificate from which the appeal is taken is based on a contract, then the fee for such appeal grading shall be double the amount specified in paragraph (d) of this section for the applicable volume of product appeal graded. If the result of any appeal grading discloses that a material error was made in the grading appealed from, no fee shall be required.

(d) *Poultry grading fees.* For each grading of any lot of poultry, whether live, dressed, or ready-to-cook, the following fees shall be applicable:

For 500 pounds or less	\$1.50
For 501 to 1,500 pounds, inclusive	2.25
For 1,501 to 3,000 pounds, inclusive	3.00
For 3,001 to 6,000 pounds, inclusive	4.00
For 6,001 to 10,000 pounds, inclusive	6.00
For 10,001 to 20,000 pounds, inclusive	10.00
For each additional 10,000 pounds or fraction thereof, in excess of 20,000 pounds	3.00

(e) *Inspection service on a fee basis.* Fees to be charged and collected for inspection services furnished on a fee basis shall be based on the time required to render such services including, but not being limited to, the time required for the travel of the inspector or inspectors in connection therewith, at the rate of \$3.60 per hour for each inspector for the time actually required.

(f) *Fees for additional copies of grading certificates and inspection certificates.* Additional copies, other than those provided for in § 70.30 and § 70.35, of any grading certificates or inspection certificates may be supplied to any interested party upon payment of a fee of \$1.00 for each set of five or fewer copies.

(g) *Traveling expenses and other charges.* Charges may be made to cover the cost of traveling and other expenses incurred by the Administration in connection with the performance of any grading service or inspection service.

(h) *Additional charges.* With respect to any grading service performed in a freight or express car or any other place where the entire lot of the product is not readily accessible to the grader, a charge of \$5.00 shall be made in addition to the applicable rates specified in paragraph (d) of this section.

(i) *On a contract basis.* Fees to be charged and collected for any grading service or inspection service, other than for an appeal grading, on a contract basis shall be those provided for in such contract. The fees to be charged for any appeal grading shall be as provided in paragraph (c) of this section.

(j) *Fees for grading service or inspection service performed under cooperative agreement.* The fees to be charged and collected for any grading service or inspection service performed under cooperative agreement shall be those provided for by such agreement.

(k) *Disposition of fees for inspections made under cooperative agreement.* Fees for inspection under a cooperative agreement with any State or person shall be disposed of in accordance with the terms of such agreement. Such portion of the fees collected under a cooperative agreement as may be due the United States shall be remitted to the Administration.

INSPECTION

§ 70.19 *Manner of handling products in an official plant.* Unless otherwise specified in the regulations in this part or by the Administrator, products which are to be further processed under inspection in an official plant shall be prepared and handled in such official plant under the supervision of an inspector.

§ 70.20 *Ante-mortem inspection.* Ante-mortem examination of poultry may be required by the Administrator as a prerequisite to any inspection; and such ante-mortem examination shall be carried out under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

§ 70.21 *Evisceration.* No viscera or any part thereof shall be removed from any dressed poultry which is to be processed under inspection in any official plant, except at the time of evisceration and inspection. Each carcass to be eviscerated shall be opened so as to expose the organs and the body cavity for proper examination by the inspector and shall be prepared immediately after inspection as ready-to-cook poultry. If a carcass is frozen, it shall be thoroughly thawed before being opened for examination by the inspector. Each carcass, or all parts comprising such carcass, shall be examined by the inspector: *Provided*, That the Administrator may, whenever he deems it advisable and under such conditions as he may prescribe, authorize the removal from such carcass or parts as aforesaid, of any part thereof prior to such inspection if such part will not be used in the preparation of any edible product.

§ 70.22 *Carcasses held for further examination.* Each carcass, including all parts thereof, in which there is any lesion of disease, or other condition, which might render such carcass or any part thereof unfit for human food, and with respect to which a final decision cannot be made on first examination by the inspector, shall be held for further examination. The identity of each such carcass, including all parts thereof, shall be maintained until a final examination has been completed.

§ 70.23 *Condemnation and treatment of carcasses.* At the time of evisceration under inspection service each carcass, or any part thereof, which is found to be unsound, unwholesome, or otherwise unfit for human food shall be condemned by the inspector and shall receive such treatment, under the supervision of the inspector as will prevent its use for human food and preclude dissemination of disease through consumption by animals.

§ 70.24 *Certification of carcasses.* Each carcass and all parts and organs thereof which are found by the inspector to be sound, wholesome, and fit for human food shall be certified as provided in this part.

§ 70.25 *Reinspection of edible products.* (a) Any inspected and certified edible product may be brought into an official plant only if the container of such product is marked for identification in the manner prescribed in § 70.12 (b) (2) and the product is reinspected by an inspector at the time it is brought into such plant. Upon reinspection, if any such product or portion thereof is found to be unsound, unwholesome, or otherwise unfit for human food, such product or portion thereof, shall be condemned and shall receive such treatment as that provided in § 70.23.

(b) Any product which is prepared under inspection in an official plant shall be inspected in such plant as often as the inspector deems it necessary in order to ascertain whether such product is sound, wholesome, and fit for human food at the time such product leaves such plant. Upon any such inspection, if any such product or portion thereof is found to be unsound, unwholesome, or otherwise unfit for human food, such product or portion thereof shall be condemned and shall receive such treatment as that provided in § 70.23.

(c) All substances and ingredients used in the manufacture or preparation of any edible product shall be clean, sound, wholesome, and fit for human food.

§ 70.26 *Edible products for canning.* Only inspected and certified edible products may be canned in an official plant; and such edible products shall be processed and handled in compliance with the following requirements:

(a) Immediate containers (whether of metal, glass, or other material) shall be cleaned thoroughly by washing in an inverted position with running water of a temperature of at least 180° F. prior to filling with edible products; and precaution shall be taken to avoid any subsequent soiling of the inner surfaces of such containers.

(b) Only perfect closure is acceptable for hermetically sealed containers; and heat processing of the products in such containers shall follow immediately after closing.

(1) Except as provided in paragraph (c) of this section, such products shall be so processed at such temperature and for such period of time as will insure preservation of the products under usual conditions of storage and transportation.

(2) Immediately after closing, and again after the containers have cooled sufficiently for handling after heat processing, careful examination shall be made by competent plant employees of all containers to ascertain whether such containers are perfectly sealed. The edible products in such containers as are defectively closed or sealed shall, as promptly as practicable, be filled into other containers, hermetically sealed, and heat processed unless the containers are promptly placed in a cooler at a

temperature not exceeding 36° F. under conditions that will promptly and effectively chill them. Such chilled containers of products shall be opened and the contents removed and reprocessed immediately after removal from the cooler. *Provided*, That if such containers remained in the cooler for a period of 24-hours or longer, the contents shall be inspected by an inspector prior to the reprocessing thereof. Failure to comply with the provisions of this paragraph shall subject the edible products to condemnation.

(c) After heat processing, and after the containers have cooled sufficiently for handling, the containers shall be examined by competent plant employees and shall not be passed unless showing the external characteristics of sound containers, that is, there is no bulging or slack or loose tin.

(d) After heat processing, any containers of edible products showing characteristics of short vacuum or over-stuffed containers shall, when an inspector deems it necessary in order to determine whether spoilage of the product has taken place, be incubated under the supervision of an inspector, after which the containers shall be opened and sound products passed for food and spoiled products condemned.

(e) Edible products may, when authorized by the national supervisor, and under such conditions as he may prescribe or approve, be canned without steam-pressure cooking, and such products shall be labeled "Perishable, keep under refrigeration."

(f) Each lot of canned edible products shall be identified, during the handling preparatory to heat processing, by tagging the baskets, cases, or containers with a tag which will change color on going through the heat processing or by other effective means which will positively prevent failure to heat process.

(g) Facilities shall be provided to incubate at least representative samples of fully processed canned edible products. The incubation shall consist of holding the samples for at least 10 days at about 98° F. The extent to which incubation tests shall be required will depend on conditions such as the efficiency of the plant in conducting canning operations, the kind of equipment used, and the degree of efficiency at which such equipment is maintained.

(1) In the event the official plant fails to provide suitable facilities for incubation of test samples of any lot of fully processed canned edible products, the inspector in charge may require holding of the entire lot under such conditions and for such period of time as will, in his discretion, be necessary to ascertain the stability of the product.

(2) The inspector in charge may, prior to completion of any required incubation of a representative sample, permit lots of fully processed canned edible products to be shipped from the official plant when he has no reason to suspect unsoundness of such products; however, such shipments shall be made under circumstances which will assure the return of the products to the plant for reinspection should such action be indicated by the incubation results.

(h) All canned products, excepting those in glass, shall be plainly and permanently marked, by code or otherwise, on the containers, with the identity of the contents and date of canning. If the marking is by code, its meaning shall be on record in the office of the inspector in charge.

§ 70.27. Products contaminated by polluted water; procedure for handling.

(a) In the event there is polluted water (including, but not being limited to, flood water and harbor water) in an official plant, all edible products that have been contaminated by the water shall be condemned.

(b) After the polluted water has receded, all walls, ceilings, posts, and floors of the rooms and compartments involved, including the equipment therein, shall, under the supervision of an inspector, be cleansed thoroughly. An adequate supply of hot water, under pressure, is essential for effective cleansing. After cleansing, a solution of sodium hypochlorite containing approximately $\frac{1}{2}$ of 1 percent of available chlorine (5,000 parts per million), or other disinfectant approved by the national supervisor, shall be applied; and all metal surfaces shall be rinsed thoroughly with water to prevent corrosion. Any such equipment that will afterwards be used in connection with any edible product shall be rinsed thoroughly with clean water before being used.

(c) Hermetically sealed containers of edible products which have been submerged in, or otherwise contaminated by, the polluted water shall be rehandled promptly under supervision of an inspector as follows:

(1) Such of the containers as are swollen or leaky or otherwise do not show the external characteristics of sound containers shall be segregated and the contents thereof condemned.

(2) Paper labels, if any, attached or affixed to the remaining containers shall be removed and the containers washed in warm soapy water; and, if necessary to remove rust and other foreign material, a brush shall be used.

(3) Thereafter, such containers shall be immersed in a solution of sodium hypochlorite containing not less than 100 parts per million of available chlorine, or other disinfectant approved specifically for this purpose by the national supervisor, and rinsed in clean fresh water and dried thoroughly. Any such containers which show extensive rusting or corrosion, such as might materially weaken the container, shall be opened under the supervision of an inspector. The edible products from such containers that are found by the inspector to be sound and wholesome shall be passed for human food.

(4) The remaining containers may be relacquered, if necessary, and then relabeled with approved labels applicable to the edible products therein.

(5) The identity of the canned edible products shall be maintained throughout all stages of the rehandling operation to insure correct labeling of the containers.

§ 70.28 Preparation of animal food or similar uninspected articles in an official plant. (a) When an article (including, but not being limited to, animal food) that will not be prepared for use as human food is prepared in any room or compartment in an official plant where edible products are prepared or handled (such room or compartments being herein referred to as "edible products department"), there shall be sufficient space allotted, and adequate equipment provided, so that the preparation of the article in no way interferes with the preparation or handling of the edible products. Where necessary, separate equipment shall be provided for the preparation of the article. To assure the maintenance of the requisite sanitary conditions in the edible products department, the operations incident to the preparation of the article shall be subject to the same sanitary requirements as apply to the edible products department. Preparation of the article shall be limited to those hours during which the official plant operates under the supervision of an inspector. The ingredients used in the preparation of the article shall, unless otherwise approved by the national supervisor, be such as may be used in the preparation of an edible product. The article may be stored in, and distributed from, the edible products department if the article is properly identified.

(b) When any article (including, but not being limited to, animal food) that will not be prepared for use as human food, is prepared in any part of an official plant other than an edible products department (such part of the plant being herein referred to as "inedible products department"), the area in which such article is prepared shall be distinctly separated from all edible products departments. Edible products and inedible products may be brought from any edible products department into any inedible products department, but no edible product or inedible product from an inedible products department may be brought into an edible products department except under such conditions as may be prescribed or approved by the national supervisor. Any such articles as are in sealed containers or are handled in the manner prescribed or approved by the national supervisor may be brought into an edible products department. Diseased carcasses or diseased parts of any carcass shall not be used in the preparation of any animal food. Trucks or containers used for the transportation of edible products or inedible products into an inedible products department shall be cleaned before being returned to or brought into an edible products department. Sufficient space shall be allotted and adequate equipment and facilities provided so that the preparation of the article does not interfere with the preparation of edible products in the plant or the maintenance of the requisite sanitary conditions in the official plant. The preparation of any article shall be subject to supervision by an inspector.

(c) The immediate container of any such article that is prepared in an official plant shall be conspicuously labeled so as to distinguish it from human food.

§ 70.29 Appeal inspections; how made. Any interested party may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision. Any such appeal from a decision of an inspector shall be made to his immediate superior having jurisdiction over the subject matter of the appeal. Review of such appeal findings, when requested, shall be made by the immediate superior of the employee of the Department making the appeal inspection.

§ 70.30 Inspection certificates—(a) Forms of inspection certificates. Each inspection certificate issued pursuant to the regulations in this part shall be approved by the Administrator as to form, and:

(1) Each dressed poultry inspection certificate shall show the class or classes of poultry, the quantity of product contained in the respective lot, and all pertinent information concerning the condition and wholesomeness thereof;

(2) Each food product inspection certificate shall show the names of the edible products covered by such certificate, the quantity of each such product, such shipping marks as are necessary to identify such products, and all pertinent information concerning the condition and wholesomeness thereof;

(3) Each export certificate shall show the respective names of the exporter and the consignee, the destination, the shipping marks, the numbers of the export stamps attached to the edible products to be exported and covered by the certificate, and the names of such products and the total net weight thereof.

(b) *Issuance and disposition of dressed poultry inspection certificates.* (1) Upon the request of an interested party, any inspector is authorized to issue a dressed poultry inspection certificate with respect to any lot of dressed poultry inspected by him. Each certificate shall be signed by the inspector who made the inspection covered by the certificate, and if more than one inspector participated in the inspection of the lot of poultry, each such inspector shall sign the certificate with respect to such lot.

(2) The original of each inspection certificate, issued pursuant to this section, and not to exceed three copies thereof, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the office of the regional supervisor serving the area in which the inspection was performed, and the remaining copies to be disposed of in such manner as the Administrator may approve. Additional copies of any such certificate may be furnished to any interested party as provided in § 70.18 (f).

(c) *Food product inspection certificates; issuance and disposition.* (1) Upon the request of an interested party, any inspector is authorized to issue a food product inspection certificate with respect to any inspected and certified edible product after suitable examination of the product has been made by the inspector.

(2) The original of each food product inspection certificate, and not to exceed two copies thereof, if requested, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. Another copy shall be filed in the office of the regional supervisor serving the area in which such certificate was issued, and one copy shall be forwarded to the Administrator. The last named two copies shall be retained until otherwise ordered by the Administrator.

(d) *Export certificates; issuance and disposition.* (1) Upon the request of an exporter, any inspector is authorized to issue an export certificate with respect to the shipment to any foreign country of any inspected and certified edible product after suitable examination of the product has been made by the inspector.

(2) Each export certificate shall be issued in quintuplicate; the original shall be delivered to the exporter who requested such certificate; and the duplicate copy shall be delivered to the agent of the railroad or other carrier transporting such products from the United States. The triplicate copy of such export certificate shall be forwarded to the Administrator; the quadruplicate copy shall be filed in the office of the regional supervisor serving the area in which such export certificate was issued; and the memorandum copy shall be retained by the inspector for filing. The last named three copies shall be retained until otherwise ordered by the Administrator.

(e) *Advance information.* Upon the request of an applicant, all or part of the contents of any inspection certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

GRADING

§ 70.31 General. Grading service performed with respect to any quantity of products shall, as the case may require, be on the basis of an examination, pursuant to the regulations in this part, of each unit thereof or of each unit in the representative sample thereof drawn by a grader. Whenever the grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of containers as indicated in the following table:

(Minimum number of containers comprising a representative sample)

Containers in lot:	Containers in sample
3 containers, or less.....	(¹)
4 to 20, inclusive.....	3
21 to 50, inclusive.....	5
51 to 140, inclusive.....	7
In excess of 140 containers.....	(²)

¹ All containers.
² Five percent of the number of containers in the lot.

§ 70.32 Live poultry. Grading service performed with respect to any quantity of live poultry shall, as the case may require, be on the basis of an exami-

nation, pursuant to regulations in this part, of each unit thereof or of each unit in the representative sample thereof drawn by a grader. Such poultry may be identified with official identification on a lot basis only.

§ 70.33 Dressed poultry and ready-to-cook poultry—(a) In an official plant. Grading service performed in an official plant with respect to dressed poultry or ready-to-cook poultry shall, as the case may require, be on the basis of each individual carcass or on a representative sample basis.

(1) Only such ready-to-cook poultry which has been inspected and certified pursuant to the regulations in this part or which has been inspected and passed by any other inspection system which is acceptable to the Administrator, may be graded.

(2) Only such ready-to-cook poultry which has been graded on an individual carcass basis may be individually identified with the appropriate grade mark, and any container of such ready-to-cook poultry may also be so identified. The grading of ready-to-cook poultry shall be performed prior to the disjointing or cutting up of the carcass.

(3) After June 30, 1953, only the bulk containers of dressed poultry may be identified with the appropriate grade mark even though the grading may have been performed on an individual carcass basis.

(b) *At terminal markets and other receiving points.* Grading service performed with respect to dressed poultry or ready-to-cook poultry at terminal markets or other receiving points may be on a representative sample basis. Only such dressed poultry which was processed in an official plant may be identified with a grade mark. Except as otherwise provided for in institutional contract specifications pursuant to § 70.4 (b), only ready-to-cook poultry which was inspected and certified and is marked with the inspection mark or in accordance with the provisions of § 70.12 (b) (2) may be graded. The grade mark shall not be applied to uninspected ready-to-cook poultry.

§ 70.34 Basis of acceptability of other official inspection systems—(a) General. Any poultry inspection system may be deemed to be acceptable to the Administrator which (1) is conducted under the authority of laws, ordinances, or similar enactments of the State, county, city, or other political subdivision in which is located the official plant at which the ready-to-cook poultry is prepared and submitted for grading service; and (2) imposes at least the requirements set forth in paragraph (b) of this section: *Provided*, That no such inspection system shall be deemed acceptable to the Administrator with respect to any official plant in which ready-to-cook poultry is prepared if he finds at any time that such requirements are not adequately enforced.

(b) *Requirements as to manner of inspection.* (1) The inspection shall be made by a State, county or city inspector who is a qualified veterinarian or under

the supervision of a qualified veterinarian. All such inspectors shall be employed by the State, county, city, or other political subdivision in which the official plant is located.

(2) The inspection shall include post-mortem examination of each poultry carcass during the evisceration operation.

(3) All carcasses which show evidence of disease or any other condition which may render them unwholesome or unfit for food shall be condemned and shall be destroyed for food purposes under the supervision of an inspector. Each carcass and part thereof which has been inspected and passed or containers of carcasses or parts thereof shall bear the identifying inspection symbol of the other official inspection system and the marking devices or labels shall be in the custody of the inspector at all times.

(c) *Determining compliance with paragraph (b) of this section.* A qualified veterinary supervisor of the poultry grading service of the Administration shall investigate the manner of operation of the inspection system to determine the adequacy of the post-mortem examination and the compliance with the requirements contained in this section prior to approving the official plant for the grading of ready-to-cook poultry. This supervisor as well as any official graders who may be stationed in the official plant shall periodically observe the inspection operations in the official plant to determine whether the requirements of this section are being met. If at any time the inspector fails to enforce the requirements as set forth in the inspection system, grading service may be withdrawn from the official plant.

§ 70.35 *Grading certificates—(a) Forms.* Grading certificates (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

(b) *Issuance and disposition.* (1) Each grader shall issue a grading certificate covering each product graded.

(2) The original of each grading certificate, issued pursuant to this section, and not to exceed three of the copies thereof, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the office of grading which serves the area in which the grading service was performed, and the remaining copies shall be disposed of in such manner as the Administrator may approve. Additional copies of any such certificate may be furnished to any interested party as provided in § 70.18 (f).

(c) *Advance information.* Upon the request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

§ 70.36 *Application for regrading of a graded product; regrading certificates—(a) Application for regrading of a graded product.* An application for a regrading of any previously graded product may be made at any time by any interested party, and such application shall clearly state the reasons for requesting the regrading. The provisions of the regulations relative to grading service shall apply to regrading service.

(b) *Regrading certificates.* Immediately after a regrading has been completed, a regrading certificate shall be issued showing the results of such regrading; and such certificate shall thereupon supersede, as of the time of issuance of the regrading certificate, the grading certificate previously issued for the product involved. Each regrading certificate shall clearly set forth the number and date of the grading certificate which it supersedes. The provisions of § 70.35 shall, whenever applicable, also apply to regrading certificates except that copies of such regrading certificates shall be furnished each interested party of record.

§ 70.37 *Appeal grading—(a) Application for appeal grading.* An application for an appeal grading may be made by any interested party who is dissatisfied with any determination stated in any grading or regrading certificate only if the identity of the product, or representative sample thereof, on the basis of which a determination was made has not been lost, and such application for the appeal grading is made within two days following the day on which the grading was performed. Upon approval by the Administrator, the time within which an application for an appeal grading may be made may be extended.

(b) *How to obtain appeal grading.* Appeal grading may be obtained by filing a request therefor (1) with the Administrator, (2) with the grader who issued the grading certificate with respect to which the appeal grading is requested, (3) with the immediate superior of such grader, or (4) with the officer in charge of any office of grading. The application for appeal grading shall clearly state the reasons therefor and may be accompanied by a copy of the aforesaid grading certificate or any other information the applicant may have secured regarding the product, at the time of grading, from which the appeal is requested. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation may be required.

(c) *Record of filing time.* A record showing the date and hour when each such application for appeal grading is received shall be maintained in such manner as the Administrator may prescribe.

(d) *When an application for an appeal grading may be refused.* Notwithstanding the provisions of paragraph (a) of this section, if it appears to the Administrator that the reasons for an

appeal grading are frivolous or not substantial, or that the quality or condition of the products has undergone a material change since the grading from which the appeal is made, or the identical products that were examined to ascertain the grade thereof cannot be made accessible for reexamination, or the act or regulations in this part have not been complied with, the Administrator may refuse the applicant's request for the appeal grading; and such applicant shall be promptly notified of the reason for such refusal.

(e) *When an application for appeal grading may be withdrawn.* An application for appeal grading may be withdrawn by the applicant at any time before the appeal grading is made upon payment, by the applicant, of all expenses incurred by the Administration in connection with such application.

(f) *Who shall perform the appeal grading.* An appeal grading of any graded product shall be made by any grader (other than the one from whose grading the appeal is made) designated for this purpose by the Administrator; and, whenever practicable, such appeal grading shall be conducted jointly by two such graders.

(g) *Appeal grading by immediate superior.* Notwithstanding the provisions of this section, whenever the immediate superior of a grader has evidence that such grader incorrectly graded a product, such superior shall immediately make a regrading of the product.

(h) *Order of performance of appeal gradings.* Appeal gradings shall be performed, insofar as practicable, in the order in which applications therefor are received; and any such application may be given precedence pursuant to § 70.6.

(i) *Appeal grading certificates.* Immediately after an appeal grading has been completed, an appeal grading certificate shall be issued showing the results of such appeal grading. Such certificate shall thereupon supersede the grading certificate for the product involved and such supersedure shall be effective as of the time of issuance of the grading certificate with respect to which the appeal is made. Each appeal grading certificate shall clearly set forth the number and the date of the grading certificate which it supersedes. The provisions of § 70.35 shall, whenever applicable, also apply to appeal grading certificates except that copies of such appeal grading certificates shall be furnished each interested party of record.

§ 70.38 *Superseded certificates.* Whenever any grading certificate is superseded in accordance with the regulations in this part such certificate shall become null and void as of the effective time of supersedure. If the original and all copies of such superseded certificate are not delivered to the person issuing the regrading certificate or appeal grading certificate, he shall notify such persons as he considers necessary to prevent fraudulent use of the superseded certificate.

SANITARY REQUIREMENTS

§ 70.39. *Minimum standards for sanitation, facilities, and operating procedures, in official plants.* Except as otherwise provided in this part the provisions of this section shall apply with respect to grading service and inspection service in all official plants other than with respect to the grading of live poultry. The table set forth in this section indicates some of the types of material which may be used in the construction of equipment, utensils and facilities for use in the plant.

BUILDINGS AND PLANT FACILITIES

(a) *The buildings shall be of sound construction and kept in good repair, and shall be of such construction as to prevent the entrance or harboring of vermin—*(1) *Outside openings.* (1) The doors, windows, skylights and other outside openings of the plant, except receiving rooms and feeding rooms shall be protected by properly fitted screens or other suitable devices, against the entrance of flies and other insects.

(11) Outside doors, except in receiving rooms and feeding rooms, shall be so hung that not over $\frac{1}{4}$ inch clearance remains when closed. Screen doors shall open toward the outside of the building. Doors shall be provided with self-closing devices where necessary to prevent the entry of vermin into processing and storage rooms.

(b) *Rooms and compartments used for edible products shall be separate and distinct from inedible products departments and from rooms where live poultry is held or slaughtered. Separate rooms shall be provided when required for conducting processing operations in a sanitary manner, and all rooms shall be of sufficient size to permit the installation of the necessary equipment for processing operations and the conduct of such operations in a sanitary manner.*

(1) *The official plant should have separate rooms for each of the following operations depending upon the various types of operations conducted, but in no case shall the receiving of feeding of live poultry or killing operations be permitted in rooms in which eviscerating operations are performed.*

(i) *The receiving and feeding of live poultry.*

(ii) *Killing, scalding, and roughing operations.*

(iii) *Pinning, finishing, and chilling and packing operations for dressed poultry.*

(iv) *Evisceration operations.* Final pinning of dressed poultry and chilling and packaging of edible products may be performed in this room. Opening in walls for conveyor lines are permissible.

(v) *Inedible products departments.*

(vi) *Refuse rooms.* Separate refuse room, or other equally adequate facilities, shall be required in eviscerating plants and in other plants where accumulations of refuse occur.

(2) *Rooms and compartments in which carcasses or parts thereof are held for further inspection shall be in such numbers and such locations as the needs of the inspection in the plant may require. These rooms and compartments shall be equipped with locks and keys and the keys shall not leave the custody of the inspector in charge of the plant. All such rooms and compartments shall be marked conspicuously with the word "retained" in letters not less than 2 inches high.*

(3) *Coolers and freezers.* Coolers and freezers of adequate size and capacity shall be provided to reduce the internal temperature of dressed poultry and ready-to-cook poultry prepared and otherwise handled in the plant to 36° F within 24 hours unless other cooling facilities are available.

(4) *Refuse rooms.* Refuse rooms shall be entirely separate from other rooms in the plant, shall have tight fitting doors and be properly ventilated.

(5) *Storage and supply rooms.* The storage and supply rooms shall be in good repair, kept dry, and maintained in a sanitary condition.

(6) *Boiler room.* The boiler room shall be a separate room, if necessary, to prevent its being a source of dirt and objectionable odors entering any room where dressed poultry or edible products are prepared, processed, handled, and stored.

(7) *Inspector's office.* Furnished office space, including, but not being limited to, light, heat and janitor service shall be provided rent free in the official plant, for the exclusive use for official purposes of the inspector or grader and the Administration. The room or rooms set apart for this purpose must meet the approval of the regional supervisor and be conveniently located, properly ventilated and provided with lockers or cabinets suitable for the protection and storage of supplies and with facilities suitable for inspectors and graders to change clothing.

(8) *Toilet rooms opening directly into rooms where poultry products are exposed shall have self-closing doors and shall be ventilated to the outside of the building.*

(c) *The floors, walls, ceilings, partitions, posts, doors and other parts of all compartments shall be of such material, construction, and finish as will make them susceptible of being readily and thoroughly cleaned—*

(1) *Floors.* (1) All floors, except those in receiving rooms and feeding rooms and floors which are kept dry, shall be constructed of hardened concrete, or of tile laid closely together with impervious joint material, or of other similar impervious material and kept in good repair.

(11) *The floors in killing, ice-cooling, ice-packing, and eviscerating rooms shall be graded to permit run-off with no standing water and in new construction and renovated plants the pitch shall be not less than $\frac{1}{4}$ inch per foot to drains.*

(111) *In new construction the junction of the wall with the floor shall be covered on a radius of not less than 2 inches and the window ledges shall be set at an angle of approximately 45°, and all upper, horizontal surfaces shall be kept to a minimum.*

(2) *Ceilings and walls.* (1) *Ceilings and walls in rooms and compartments where exposed edible products are processed, handled or stored shall have tiled, enameled, or other smooth surface impervious to moisture.*

(11) *Cooler and freezer rooms shall have interior surfaces impervious to moisture so as to permit thorough cleaning.*

(3) *Blood disposal.* (1) *Adequate facilities shall be provided for the disposal of blood in a sanitary manner.*

(11) *When bleeding troughs are used they shall be long enough to catch the blood during the bleeding process and shall be cleaned daily. Such troughs shall be installed so as to pitch at least $\frac{1}{2}$ inch per foot toward a smooth metal catch basin or basins, of sufficient capacity for a day's operation at peak production, or shall be flushed continuously.*

(d) *There shall be an efficient draining and plumbing system for the plant and premises.*

(1) *All drains and gutters shall be properly installed with approved traps and vents. The drainage and plumbing system must permit the quick run-off of all water from plant buildings, and surface water around the plant and on the premises; and all such water shall be disposed of in such a manner as to prevent a nuisance or health hazard.*

(2) *Sewerage and plant wastes.* (1) *The sewerage system shall have adequate slope and capacity to remove readily all waste from the various processing operations and to minimize, and if possible to prevent stoppage and surcharging of the system.*

(11) *Grease traps which are connected with the sewerage system shall be suitably located but not near any edible products department or in any area where products are unloaded from, or loaded into, vehicles. To facilitate cleaning such traps shall have inclined bottoms and be provided with suitable covers.*

(111) *In new construction, toilet soil lines shall be separate from house drainage lines to a point outside the buildings; and drainage from toilet bowls and urinals shall not be discharged into a grease catch basin.*

(iv) *All floor drains shall be equipped with traps, constructed so as to minimize clogging; and the plumbing shall be installed so as to prevent sewerage from backing up and from flooding the floor.*

(v) *Floor drainage lines should be of metal and at least 4 inches in diameter and open into main drains of at least 6 inches in diameter and shall be properly vented to the outside air.*

(vi) *In new construction, valley or gutter drains shall have concave bottoms or the junctions of the sides and the bottoms shall be coved.*

(vii) *Where refrigerators are equipped with drains, such drains should be properly trapped and should discharge through an air gap into the sewer system. All new installations, and all replacements, of refrigerators equipped with drains shall meet these requirements.*

(e) *The water supply shall be ample, clean, and potable with adequate pressure and facilities for its distribution in the plant, and its protection against contamination and pollution.*

(1) *Hot water at a temperature not less than 180° F. shall be available for sanitation purposes.*

(2) *Hose connections with steam and water mixing valves or hot water hose connections shall be provided at convenient locations throughout the plant for cleaning purposes.*

(3) *The refuse rooms shall be provided with adequate facilities for washing refuse cans and other equipment in the rooms; and the rooms, cans, and equipment shall be cleaned after each day's use.*

(f) *Modern lavatory accommodations, and properly located facilities for cleaning utensils and hands shall be provided.* (1) *Adequate lavatory and toilet accommodations, including, but not being limited to, running hot water and cold water, soap, and towels, shall be provided. Such accommodations shall be in or near toilet and locker rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products.*

(2) *Sufficient metal containers shall be provided for used towels and other wastes.*

(3) *The water supply in all hand washing facilities serving areas where dressed poultry and edible products are prepared shall be operated by other than hand operated controls or shall be of a continuous-flow type.*

(4) *Durable signs shall be posted conspicuously in each toilet room and locker room directing employees to wash their hands before returning to work.*

(5) *Adequate toilet facilities shall be provided and the following formula shall serve as a basis for determining the adequacy of such facilities:*

	Toilet bowls required
Persons of same sex:	
1 to 15, inclusive	1
16 to 35, inclusive	2
36 to 55, inclusive	3
56 to 80, inclusive	4
For each additional 30 persons in excess of 80	1

¹ *Urinals may be substituted for toilet bowls but only to the extent of one-third of the total number of bowls stated.*

(g) There shall be ample light, either natural or artificial or both, of good quality and well distributed, and sufficient ventilation for all rooms and compartments to insure sanitary conditions. (1) All rooms in which poultry is killed, eviscerated, or otherwise processed shall have at least 10 foot candles of light intensity on all working surfaces except that at the grading and inspection stations such light intensity shall be of 50 foot candles. In all other rooms there shall be provided at least 4 foot candles of light intensity when measured at a distance of 30 inches from the floor.

(2) All rooms shall be adequately ventilated to eliminate objectionable odors and minimize moisture condensation.

EQUIPMENT AND UTENSILS

(h) Equipment and utensils used for the preparation, processing, or otherwise handling any product in the plant shall be suitable for the purpose intended and shall be of such material and construction as will facilitate their thorough cleaning and insure cleanliness in the preparation and handling of products. (1) Insofar as it is practical, equipment and utensils shall be made of metal or other impervious material. Trucks and receptacles used for handling inedible products shall be of similar construction and shall be conspicuously and distinctly marked and shall not be used for handling any edible products.

(2) Batteries should be constructed entirely of metal and have metal dropping pans so as to permit proper and complete washing and cleaning. Batteries that are not made entirely of metal shall be replaced with metal batteries whenever replacement becomes necessary.

(3) Metal refuse containers with covers shall be provided; and such containers shall be kept covered.

(4) Scalding equipment. (1) Scalding equipment, tank or spray type, shall be made of metal and have smooth surfaces, and be of such construction as to permit proper and complete washing and cleaning.

(ii) The scalding tanks, when used, shall be so constructed as to prevent contamination of potable water lines and to permit water to enter continuously at the rate of $\frac{1}{4}$ gallon per bird per minute and to flow out through an overflow.

(iii) The overflow outlets in scalding equipment shall be of sufficient size to permit feathers and water to be carried off.

(iv) The overflow, draw-off valves, and sediment basin drain shall discharge into a floor or valley drain, or onto the floor in close proximity to a floor or valley drain.

(5) Mechanical pickers. When necessary, safety guards shall be installed around moving machine parts of mechanical pickers, and such guards shall be of such construction as not to be difficult or laborious to remove or to keep clean. Sheet metal or metal grills fastened down with sufficient bolts and wing nuts are preferable.

(6) Wax finishing. (1) When wax dipping is used, metal troughs shall be provided to catch the wax removed from the dipped poultry. Acceptable facilities and methods shall be employed in reclaiming the wax.

(7) Ice chilling vats. (1) Chilling vats or tanks used for chilling dressed poultry should be, and all replacements thereof and all chilling vats or tanks used for chilling ready-to-cook poultry shall be, made of metal or other hard-surfaced impervious material.

(ii) Ice shovels shall be smooth surfaced and made of metal.

(8) Grading and packing bins. Where grading bins are used for poultry, they shall be of sufficient number and capacity to handle the grading adequately without the use of makeshift bins; and all dressed poultry shall be kept off the floor. Grading bins may

be made of metal or enameled wood and shall be constructed and maintained in such a manner as to allow easy and thorough cleaning. All replacements of such bins shall, however, be of metal.

(9) Except as otherwise provided herein, all equipment and utensils used in the killing, roughing, pinning, chilling and packing rooms shall be of metal or other impervious material and constructed so as to permit proper and complete cleaning.

(10) Conveyors. (1) Conveyors used in the preparation of ready-to-cook poultry shall be of metal or other acceptable material and of such construction as to permit thorough and ready cleaning and easy identification of viscera with its carcass, and so designed as will present each carcass or all parts thereof in a way that will permit adequate, and efficient inspection.

(ii) Overhead conveyors shall be so constructed and maintained that they will not allow grease, oil, or dirt to accumulate on the drop chain or shackle which shall be of non-corrosive metal.

(iii) Non-metallic belt-type conveyors used in moving edible products shall be of water-proof composition.

(iv) When individual trays or other acceptable equipment are not used during eviscerating operations, each carcass shall be suspended and a metal trough shall be provided beneath the conveyor to extend from the point where the carcass is opened to the point where the viscera has been completely removed, and such troughs shall be flushed continuously by a water spray.

(11) Inspection, eviscerating, and cutting tables shall be made of metal and have coved corners and be so constructed and placed to permit thorough cleaning.

(12) In plants where no conveyors are used, each carcass shall be eviscerated in an individual metal tray of seamless construction.

(13) Water spray washing equipment with sufficient water pressure to thoroughly and efficiently wash carcasses shall be used for washing carcasses inside and out.

(14) Watertight metal receptacles shall be used for entrails and other waste resulting from preparation of eviscerated poultry.

(15) Watertight trucks and receptacles for holding or handling diseased carcasses and diseased parts of carcasses shall be so constructed as to be readily and thoroughly cleaned; such trucks and receptacles shall be marked in a conspicuous manner with the word "condemned" in letters not less than 2 inches high and, when required by the inspector in charge, shall be equipped with facilities for locking and sealing.

(16) Freezing rooms should be adequately equipped to freeze ready-to-cook poultry solid in less than 60 hours. Freezing rooms shall be equipped with floor racks or pallets and fans to insure air circulation.

(17) Cooling racks should be made of metal and be readily accessible for thorough washing and cleaning. All replacements of cooling racks shall be made of metal.

(18) Trucks and receptacles in which carcasses or parts thereof are held for further inspection shall be in such numbers and in such locations as the needs of the inspection in the plant may require. They shall be equipped for locking by means of lock and key and the key shall not leave the custody of the inspector in charge of the plant. Such trucks and receptacles shall be marked conspicuously with the word "retained" in letters not less than 2 inches high.

(1) All equipment shall be so placed as to be readily accessible for all processing and cleaning operations. (1) Mechanical pickers. When used in the plant, mechanical pickers shall be so installed as to be accessible for thorough cleaning and removal of the accumulation of feathers.

(j) Equipment and utensils used in the official plant shall not be used outside the official plant except under such conditions as may be prescribed or approved by the national supervisor, and equipment used in the preparation of any article (including, but not being limited to, animal food), from inedible material shall not be used outside of the inedible products department except under such conditions as may be prescribed or approved by the national supervisor.

MAINTENANCE OF SANITARY CONDITIONS AND PRECAUTIONS AGAINST CONTAMINATION OF PRODUCTS

(k) The premises shall be kept free from refuse, waste materials, and all other sources of objectionable odors and conditions.

(1) Rooms, compartments, or other parts of the official plant in which products are handled and kept shall be kept clean and in sanitary condition. (1) All feathers, blood, offal, birds or parts of birds too severely damaged to be salvaged, and all discarded containers and other materials shall be completely disposed of daily.

(2) All windows, doors, and light fixtures in the official plant shall be kept clean.

(3) All docks and rooms shall be kept clean and free from debris and unused equipment and utensils.

(4) Live poultry receiving docks and receiving rooms shall be of such construction as readily to permit their thorough cleaning.

(5) Floors in feeding rooms shall be cleaned with such regularity as may be necessary to maintain them in a sanitary condition.

(6) The killing, roughing, and pinning room shall be kept clean and free from offensive odors at all times.

(7) The walls, floors, and all equipment and utensils used in the killing, roughing and pinning room shall be thoroughly cleaned after each day's operation.

(8) The floors in the killing, roughing, and pinning room shall be cleaned frequently during roughing and finishing operations and be kept reasonably free from accumulated blood, feathers, manure, water, and dirt.

(9) All equipment in the toilet and locker room, as well as the room itself, shall be kept clean, sanitary, and in good repair.

(10) Cooler and freezer rooms shall be free from objectionable odors of any kind and shall be maintained in a sanitary condition (including, but not being limited to, the prevention of drippings from refrigerating coils onto products).

(m) Equipment and utensils used for preparing or otherwise handling any product shall be kept clean and in a sanitary condition and in good repair. (1) Batteries and dropping pans shall be cleaned regularly and the manure removed from the plant daily.

(2) The feed mixer shall be cleaned daily.

(3) Scalding tanks shall be completely emptied and thoroughly cleaned as often as may be necessary but not less frequently than once a day.

(4) Ice shovels shall be kept clean, free of corrosion, and shall be stored off the floor.

(5) All equipment and utensils used in the killing, roughing, and pinning rooms shall be thoroughly washed and cleaned after each day's operation. The chilling and packing room and equipment and utensils used therein shall be maintained in a clean and sanitary condition.

(6) Graders' and packers' gloves and grading bins shall be washed daily and used only for grading or packing, as the case may be.

(7) Chilling vats or tanks shall be emptied and rinsed after each use. They shall be thoroughly cleaned once daily and after each cleaning operation they shall be sanitized with such compounds or by such methods as may be approved or prescribed by the Administrator.

(8) *Thawing.* When frozen poultry is to be defrosted in water, adequate facilities (tanks, vats, or racks) shall be provided, including continuously running tap water of sufficient volume for thawing such poultry. Such poultry shall not be thawed in still water and the thawing tanks shall be emptied and rinsed after each use. The tanks shall be thoroughly cleaned once daily and after each cleaning operation they shall be sanitized with such compounds or by such methods as may be prescribed or approved by the Administrator. If water is heated it shall not be heated above 70° F. Thawing tanks shall be equipped with properly installed overflow pipes to discharge over a floor drain or a valley drain. Where mechanical devices are not used for removing thawed carcasses from thawing tanks, the tanks shall be of a size as will enable employees to remove poultry without getting inside the tanks.

(9) When synchronized overhead conveyors and tray conveyors are used, the trays shall be completely washed and sanitized after being automatically emptied of inedible viscera.

(10) When a conveyor tray operation is used, such trays shall be of metal of seamless construction and shall be completely washed and sanitized after each use.

(11) Tables, shelves, bins, trays, pans, knives, and all other tools and equipment used in the preparation of ready-to-cook poultry shall be kept clean and sanitary at all times. Cleaned equipment and utensils shall be drained on racks and shall not be nested.

(12) Drums, cans, tanks, vats, and other receptacles used to hold or transport dressed poultry, or eviscerated poultry, shall be kept in a clean and sanitary condition.

(n) *Operations and procedures involving the preparation, storing, or handling of any product shall be strictly in accord with clean and sanitary methods.*

(1) There shall be no handling or storing of materials which create an objectionable condition in rooms, compartments, or other places in the plant where any product is prepared, stored, or otherwise handled.

(2) The pinning and finishing operations shall be performed in a part of the room that is away from the killing and roughing operations.

(3) Blood from the killing operation shall be confined to a relatively small area and kept from being splashed about the room.

(4) In finishing and cleaning dressed poultry, the carcass shall be singed, feed shall be removed from the crop, and the fecal material in the cloaca shall be removed by venting, and such operations shall be completed prior to or during the final washing but prior to chilling and packaging of such dressed poultry. Notwithstanding the foregoing, dressed poultry which is to be eviscerated in an official plant within 72 hours from time of slaughter may, when approved by the Administration, be transferred by conveyor or operational type container or other approved means to such official plant prior to removal of the feed in the crop.

(5) The head of each dressed poultry carcass shall be washed thoroughly to remove feed from the mouth and blood from the head and mouth.

(6) In the final washing, the carcass shall be passed through a system of sprays providing an abundant supply of fresh clean water either under pressure or scrubbing action.

(7) *Grading and packaging.* Dressed poultry may be graded and packaged in the killing, roughing, pinning, chilling, and packing room; however, such poultry shall be graded and packed in an area of the room which is well isolated from the killing and roughing operation.

(8) The floors in the eviscerating room shall be kept clean and reasonably dry during eviscerating operations and free of all refuse.

(9) Conveyors shall be operated at such speeds as will permit a sanitary eviscerating operation and will permit adequate inspection for condition and wholesomeness.

(10) Mechanized packaging equipment shall be maintained in good sanitary condition.

(11) All offal resulting from the eviscerating operation shall be removed as often as necessary to prevent the development of a nuisance.

(12) Paper and other material used for lining barrels or other containers in which products are packaged shall be of such kinds as do not tear readily during use, but remain intact when moistened by the product.

(13) Protective coverings shall be used for the product in the plant and as it is distributed from the plant, as will afford adequate protection for the product against contamination by any foreign substance (including, but not being limited to, dust, dirt, and insects), considering the means intended to be employed in transporting the product from the plant.

(14) Containers to be used for packaging dressed poultry and ready-to-cook poultry shall be clean, free from objectionable substances or odors and of sufficient strength and durability to adequately protect the product during normal distribution.

(15) Refuse may be moved directly to loading docks only for prompt removal.

(16) *Cleanliness and hygiene of personnel:*

(i) All employees coming in contact with dressed poultry, exposed edible products, or edible products handling equipment shall wear clean garments and shall keep their hands clean at all times while thus engaged.

(ii) Hands of employees handling dressed poultry or edible products or edible products handling equipment shall be free of infected cuts, boils, and open sores at all times while thus engaged.

(iii) Every person after each use of toilet or change of garments shall wash his hands thoroughly before returning to duties that require the handling of dressed poultry or edible products, or containers therefor, or edible products handling equipment.

(iv) Neither smoking nor chewing of tobacco shall be permitted in any room where exposed edible products are prepared, processed, or otherwise handled.

(c) *Temperatures and procedures which are necessary for cooling and freezing poultry shall be in accordance with sound operating practices which insure the prompt removal of the animal heat and as will maximize the preservation of the quality and condition of the poultry.* (1) All dressed poultry and ready-to-cook poultry that is prepared in the official plant shall be cooled immediately after processing. Such poultry shall be cooled to an internal temperature of 40° F. or less, within 24 hours from the time of slaughter. If such poultry is to be shipped from the plant in packaged form, the poultry shall be cooled to and maintained at a temperature of 40° F. or less prior to shipment from the plant. However, when approved by the Administration, poultry may be shipped from the plant prior to cooling to 40° F. or less, if such poultry is shipped to and placed in a freezer promptly.

(2) *Ice chilling.* (i) Only ice manufactured or produced from potable water may be used for ice chilling. The ice shall be handled and stored in a sanitary manner. If of block-type, the ice shall be washed by spraying with clean water before crushing. Metal ice crushers shall be washed at least once daily.

(ii) Enough clean crushed ice shall be used to maintain a temperature in vats or tanks under 40° F. at all times during chilling. Dressed poultry carcasses weighing less

than 8 pounds should be chilled to 40° F. or below in less than 4 hours whereas carcasses weighing more than 8 pounds should be chilled to 40° F. or below in less than 8 hours. In order to facilitate continuous processing operations dressed poultry may be held overnight in chilling tanks provided it is processed and packaged at the resumption of operations the following morning. If such poultry is to be held in chilling tanks for longer periods it shall be properly repacked with crushed ice in clean tanks which are continually drained and during this holding period the internal temperature of the dressed poultry shall be maintained at or below 40° F.

(3) *Air chilling.* In air chilling, dressed poultry shall be passed through a spray of clean water immediately following the removal of the feathers, and then hung on racks. Thereupon the racks of dressed poultry shall be placed in a refrigerated room with moderate air movements and a temperature which will reduce the internal temperature of the carcass to 40° F. or less, within 24 hours.

(4) *Freezing.* (1) When dressed poultry is packaged in bulk or shipping containers, the carcasses should be individually wrapped or packaged in water-vapor resistant cartons or the containers should be lined with heavy water-vapor resistant paper so as to assure adequate overlapping of the lining to completely surround the carcasses and to permit unsealed closure or sealing in such a manner that water-vapor loss from the product is considerably retarded or prevented. The dressed poultry should receive initial rapid freezing under such packaging, temperature, air circulation, and stacking conditions which will result in freezing the carcasses solid in less than 60 hours. Any carcass weighing less than 8 pounds should freeze solid in from 30 to 40 hours, whereas a carcass weighing more than 8 pounds should freeze solid in from 48 to 60 hours. (The approximate highest temperatures which will attain this result under average to most favorable conditions, are -10° F. with circulated air and -20° F. with still air; however, freezing temperatures of -20° F. to -40° F. are desirable.)

(ii) Frozen dressed poultry should be stored at 0° F. or below, with temperature maintained as constant as possible.

(5) Immediately after packaging, all dressed poultry and ready-to-cook poultry other than that which is ice-packed or shipped from the plant in a refrigerated carrier should be moved into the freezer. If such poultry is to be held in the plant for longer than 24 hours it should be held at not above 36° F.

(6) When poultry is packed in ice in barrels or other containers the barrels and containers shall be covered and shall have an adequate number of drain holes to permit water to drain out.

(7) The provisions of subparagraphs (2) and (4) of this paragraph shall be applicable to ready-to-cook poultry.

(p) *Every practicable precaution shall be taken to exclude flies, rats, mice, and other vermin from the official plant.* (1) Dogs, cats, and other pets shall be excluded from rooms where edible products and dressed poultry are processed, handled and stored.

(q) *No person affected with any communicable disease (including, but not being limited to, tuberculosis) in a transmissible stage shall be permitted in any room or compartment where exposed or unpacked dressed poultry or edible products are prepared, processed, or otherwise handled.*

(r) Table showing types of materials.

Equipment, utensils, and facilities	Iron	Rubber	Concrete	Stainless steel and monel metal	Aluminum	Galvanized iron	Copper (tin plated)	Porcelain or glazed tile
Batteries				A	A	A		
Overhead conveyors	A			A	A	A		
Conveyor track	A			A	A	A		
Shackle chain				A	A	A		
Shackles				A	A	A		
Blood trough	A		A	A	A	A		
Scalding vat	A		A	A	A	A		
Mechanical pickers	A	A		A	A	A		
Mechanical scrubber	A	A		A	A	A		
Wax-dipping tank	A			A	A	A		
Trough for catching wax	A			A	A	A		
Water-spray cooling chamber				A	A	A		
Opening trough				A	A	A		
Eviscerating pans				A	A	A		
Inspection table (those parts which come in contact with product)				A	A	A		
Eviscerating trough				A	A	A		
Framework (of equipment)	A			A	A	A		
Inside and outside washer		A		A	A	A		A
Gizzard, heart, and liver trimming tables				A	A	A		
Defrosting trucks				A	A	A		
Defrosting tanks			A	A	A	A		A
Cooling racks				A	A	A		
Tanks or vats and other equipment used for cooling products			A	A	A	A		
Above-the-floor grease traps				A	A	A		
Utensils for handling edible products				A	A	A		
Boning and cooling tables, cutting surfaces				A	A	A		
Cooking kettles	A			A	A	A	A	

§ 70.40 Authority of Administrator to amend minimum standards for sanitation, facilities, and operating procedures in official plants. The Administrator is authorized to amend the provisions in § 70.39; and such amended provisions shall be applicable to official plants.

SUBPART B—UNITED STATES CLASSES, STANDARDS, AND GRADES FOR POULTRY

§ 70.101 United States classes of live poultry, dressed poultry, and ready-to-cook poultry. The provisions of this section apply to live poultry, dressed poultry, and individual carcasses of ready-to-cook poultry, in determining the kind of poultry and its class. The kinds of poultry are as follows: Chickens, turkeys, ducks, geese, guineas, and pigeons.

(a) **Chickens.** For the purpose of this section, the following classes of chickens are specified:

(1) **Broiler or fryer.** A broiler or fryer is a young chicken (usually under 16 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(2) **Roaster.** A roaster is a young chicken (usually under 8 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than that of a broiler or fryer.

(3) **Capon.** A capon is an unsexed male chicken (usually under 10 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(4) **Stag.** A stag is a male chicken (usually under 10 months of age) with coarse skin, somewhat toughened and darkened flesh, and considerable hardening of the breastbone cartilage. Stags show a condition of fleshing and a degree of maturity intermediate between that of a roaster and a cock or old rooster.

(5) **Hen or stewing chicken or fowl.** A hen or stewing chicken or fowl is a mature female chicken (usually more than 10 months old) with meat less tender than that of a roaster, and non-flexible breastbone.

(6) **Cock or old rooster.** A cock or old rooster is a mature male chicken with coarse skin, toughened and darkened meat, and hardened breastbone.

(b) **Turkeys.** For the purpose of this section, the following classes of turkeys are specified:

(1) **Fryer or roaster.** A fryer or roaster is a young immature turkey (usually under 16 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(2) **Young hen turkey.** A young hen turkey is a young female turkey (usually under 8 months of age) that is tender-meated with soft, pliable, smooth-textured skin, and breastbone cartilage that is somewhat less flexible than in a turkey fryer or roaster.

(3) **Young tom turkey.** A young tom turkey is a young male turkey (usually under 8 months of age), that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than in a turkey fryer or roaster.

(4) **Hen turkey.** A hen turkey is a fully matured female turkey (usually over 10 months of age) that is less tender-meated than a young hen turkey, has a hardened breastbone, and may have coarse-textured skin and patchy areas of surface fat.

(5) **Tom turkey.** A tom turkey is a mature male turkey (usually over 10 months of age) with coarse skin, toughened flesh, and hardened breastbone.

(c) **Ducks.** For the purpose of this section the following classes of ducks are specified:

(1) **Broiler duckling or fryer duckling.** A broiler duckling or fryer duckling is a young duck (usually under 8 weeks of age) of either sex, that is tender-meated and has a soft bill and soft windpipe.

(2) **Roaster duckling.** A roaster duckling is a young duck (usually under 16 weeks of age), of either sex, that is tender-meated and has a bill that is not completely hardened and a windpipe that is easily dented.

(3) **Mature duck or old duck.** A mature duck or an old duck is a duck (usually over 6 months of age), of either sex, with toughened flesh, hardened bill, and hardened windpipe.

(d) **Geese.** For the purpose of this section, the following classes of geese are specified:

(1) **Young goose.** A young goose may be of either sex, is tender-meated, and has a windpipe that is easily dented.

(2) **Mature goose or old goose.** A mature goose or old goose may be of either sex and has toughened flesh and hardened windpipe.

(e) **Guineas.** For the purpose of this section, the following classes of guineas are specified:

(1) **Young guinea.** A young guinea may be of either sex and is tender-meated.

(2) **Mature guinea or old guinea.** A mature guinea or an old guinea may be of either sex and has toughened flesh.

(f) **Pigeons.** For the purpose of this section, the following classes of pigeons are specified:

(1) **Squab.** A squab is a young, immature pigeon of either sex, and is extra tender-meated.

(2) **Pigeon.** A pigeon is a mature pigeon of either sex, with coarse skin and toughened flesh.

§ 70.102 United States standards for quality of live poultry—(a) General.

(1) The United States standards for quality of individual live birds contained in this section are applicable only to poultry of the kinds and classes set forth in § 70.101.

(2) Birds showing evidence of any disease or other condition which may render them unwholesome or unfit for human food shall not be included in any of the quality designations specified in this section.

(3) The following factors are considered in ascertaining the quality of an individual bird: (i) Health and vigor; (ii) feathering; (iii) conformation; (iv) fleshing; (v) fat covering; and (vi) the degree of freedom from defects.

(b) **Standards of quality—(1) A Quality or No. 1 Quality.** To be of A Quality or No. 1 Quality the live bird:

(i) Is alert, has bright eyes, and is of good health and vigor.

(ii) Is well feathered, with feathers showing luster or sheen and quite thoroughly covering all parts of the body; however, there may be a slight scattering of pinfeathers.

(iii) Is of normal physical conformation except that it may have a slightly curved breastbone or other slight abnormality in the shape of the breastbone which does not interfere with the normal distribution of the flesh. The bird may also have a slightly curved back. There may be a dent in the breastbone which does not exceed $\frac{1}{8}$ inch in depth except that for turkeys the depth does not exceed $\frac{1}{4}$ inch.

(iv) Has a well developed, moderately broad and long breast that is well-fleshed throughout its entire length; and the thighs and back are well covered with flesh according to the age and sex of the bird.

(v) Has the breast, back, hips, and pin bones well covered with fat, except that

a fryer (whether chicken or turkey) and a young tom turkey may have only a moderate amount of fat covering these parts, and a hen, stewing chicken, or fowl does not have excessive abdominal fat.

(vi) Is free from tears and broken bones; however, it may have slight scratches, slight skin bruises, and slight callouses (i. e., slightly thickened, hardened, and darkened areas of skin over the breastbone), if these conditions do not materially affect the appearance of the bird, especially the breast. It may also have slightly scaly shanks.

(2) **B Quality or No. 2 Quality.** To be of B Quality or No. 2 Quality the live bird:

(i) Is of good health and vigor.

(ii) Is fairly well feathered (i. e., some feathers may be lacking on some parts of the body); however, there may be a moderate number of pinfeathers.

(iii) Is of normal physical conformation except that it may have a slightly crooked breastbone which does not seriously interfere with the normal distribution of the flesh. It may also have a moderately crooked back and slightly misshapen legs and wings.

(iv) Is fairly well fleshed in relation to length and depth of body, with all parts fairly well covered with flesh according to the age and sex of the bird.

(v) Has sufficient coverage of fat on breast and legs to prevent a distinct appearance of the flesh through the skin; however, a hen, stewing chicken, or fowl may have excessive abdominal fat.

(vi) Is free from tears, broken bones, severe breast blisters, heavy callouses (i. e., thickened, hardened, and darkened areas of skin over the breastbone) and seriously scaly shanks; however, it may have moderate skin bruises and slight flesh bruises.

(3) **C Quality or No. 3 Quality.** A live bird that does not meet the requirements of B Quality or No. 2 Quality may be of C Quality or No. 3 Quality and such bird may:

(i) Be lacking in vigor.

(ii) Have a large number of pinfeathers over all parts of its body and complete lack of plumage feathers on the back.

(iii) Have definite deformities (including, but not being limited to, a crooked breastbone, hunchback, and slight crippling).

(iv) Have a poorly developed, narrow breast and thin covering of flesh over all parts of its body.

(v) Have only a small amount of fat in the feather tracts and is completely lacking in fat on back and thighs; and

(vi) Have skin bruises, small or moderate flesh bruises, and severe breast blisters; however, it has no broken bones.

The term "Reject" is not a standard of quality within the purview of this section; however, such term may be used with respect to an individual live bird to indicate that it is affected by, or shows evidence of, any disease or condition (including, but not being limited to, large flesh bruises, severe discolorations, severe injury, and emaciation) which may render the bird unfit for human food.

§ 70.103 United States grades for live poultry—(a) General. (1) The United States grades for live poultry contained in this section are applicable to live poultry of the kinds and classes set forth in § 70.101 and are based upon United States standards for quality as set forth in § 70.102.

(2) Birds showing evidence of any disease or other condition which may render them unwholesome or unfit for human food shall not be included in any of the grade designations specified in this section.

(3) All terms in the United States standards for quality, as set forth in § 70.102, shall, when used in this section, have the same meaning as when used in the standards.

(b) **Grades.**—(1)

U. S. Grade A or U. S. No. 1. Any lot of live poultry may be designated as U. S. Grade A or U. S. No. 1 if at least 90 percent, by count, of the birds are of A Quality or No. 1 Quality and the remainder are of B Quality or No. 2 Quality. When more than one container comprises the lot, no container shall have more birds of B Quality or No. 2 Quality than that specified in the following table:

[When lot consists of more than 1 container]

Grade	Number of birds in container	Maximum number of B quality or No. 2 quality birds
U. S. Grade A or U. S. No. 1	Less than 10	1 bird
	10 to 15, inclusive	2 birds
	16 to 20, inclusive	3 birds
	21 to 25, inclusive	4 birds
	26 or more	5 birds

(2) **U. S. Grade B or U. S. No. 2.** Any lot of live poultry may be designated as U. S. Grade B or U. S. No. 2 if at least 90 percent, by count, of the birds are of B Quality or No. 2 Quality, or better, and the remainder are of C Quality, or No. 3 Quality. When more than one container comprises the lot, no container shall have more birds of C Quality or No. 3 Quality than that specified in the following table:

[When lot consists of more than 1 container]

Grade	Number of birds in container	Maximum number of C quality or No. 3 quality birds
U. S. Grade B or U. S. No. 2	Less than 10	1 bird
	10 to 15, inclusive	2 birds
	16 to 20, inclusive	3 birds
	21 to 25, inclusive	4 birds
	26 or more	5 birds

(3) **U. S. Grade C or U. S. No. 3.** Any lot of live poultry may be designated as U. S. Grade C or U. S. No. 3 if it consists of birds of not less than C Quality or No. 3 Quality.

The term "No Grade" is not a grade within the meaning of this section. Such term may be applied to any lot of live poultry if such lot contains any birds of less than C Quality or No. 3 Quality or has not been graded in accordance with this section.

§ 70.104 United States standards for quality of dressed poultry and ready-to-cook poultry—(a) General. (1) The United States standards for quality contained in this section are applicable to individual carcasses of dressed poultry and ready-to-cook poultry of the kinds and classes set forth in § 70.101.

(2) Carcasses found to be unsound, unwholesome, or unfit for food shall not be included in any of the quality designations specified in this section. If the carcass is dressed poultry, determination of unsoundness or unwholesomeness will be based on external characteristics only.

(3) The quality designations specified in this section may not be made applicable to dressed poultry that is not free from the following conditions: Dirty head; bloody head; dirty carcass; bloody carcass; dirty vent; dirty feet; fan feathers on the wing tips; garter feathers around the hock joints; neck feathers; and, if the crop is not removed, feed in the crop.

(4) The A Quality designation may not be made applicable to any poultry carcass if the poultry was wet picked in such a manner that the skin has been damaged by extended immersion in, or high temperature of, the water which resulted in immediate discoloration or may result in later objectionable discoloration.

(5) The following factors are considered in ascertaining, pursuant to this section, the quality of an individual carcass: (i) Conformation; (ii) fleshing; (iii) fat covering; (iv) the degree of freedom from pinfeathers and vestigial feathers (i. e., hair or down, as the case may be); (v) the degree of freedom from tears, cuts (including, but not being limited to, any cut for the removal of the crop), disjointed bones, and broken bones; (vi) the degree of freedom from discolorations of the skin and of the flesh and of blemishes and bruises of the skin and flesh; and (vii) the degree of freedom from freezer burn.

(6) In interpreting the respective requirements specified in this section for A quality, B quality, and C quality, the intensity, aggregate area involved and locations of (i) discolorations (whether or not caused by dressing operations), (ii) bruises, (iii) pinfeathers, and (iv) freezer burn, as such defects individually, or in combination, detract from the general appearance of the carcass, will be considered in determining the particular quality of an individual carcass.

(b) **Standards of quality—(1) A Quality.** To be of A Quality the carcass:

(i) Is of normal physical conformation except that it may have a slightly curved breastbone or other slight abnormality in the shape of the breastbone which does not interfere with the normal distribution of the flesh. The carcass may also have a very slightly curved back. There may be a dent in the breastbone which does not exceed $\frac{1}{8}$ inch in depth except that for turkeys the depth does not exceed $\frac{1}{4}$ inch.

(ii) Has a well-developed, moderately broad and long breast, well-fleshed

throughout its entire length, with the flesh carrying sufficiently well up to the crest of the breastbone so that the breastbone is not prominent; and, with respect to young tom turkeys, there may be a slight thickening and slight pouchiness of the skin on the forepart of the breast. The legs are well covered with flesh.

(iii) Has the breast, back, hips, and pin bones well covered with fat except that chicken broilers or fryers, and young tom turkeys may have only a moderate amount of fat covering these parts, a turkey fryer or roaster may be somewhat lacking in fat covering, and a hen, stewing chicken, or fowl does not have excessive abdominal fat.

(iv) Is practically free from pinfeathers and vestigial feathers, especially on the breast, if the carcass is dressed poultry. If the carcass is ready-to-cook poultry, it is free from protruding pinfeathers, practically free from nonprotruding pinfeathers and vestigial feathers, especially on the breast.

(v) Is free from skin tears and cuts on the breast and legs; however, elsewhere on the carcass there may be tears and cuts (exclusive of the cuts usually made to remove the neck and viscera in the production of eviscerated poultry) the aggregate length of which does not exceed $1\frac{1}{2}$ inches except that, with respect to any turkey carcass or goose carcass, such aggregate length does not exceed 3 inches. There are no sewn tears or cuts. The carcass has no disjointed bones or broken bones except that it may have one disjointed bone in either a leg or wing but only if there is no evidence of a related bruise or blood clot; and, if the carcass is of a chicken broiler or fryer, it may have one nonprotruding broken bone in a wing in addition to such disjointed bone but only if there is no evidence of a related bruise or blood clot. The wing tips may have been removed.

(vi) Is free from bruises and discolorations of the flesh on the breast and legs; however, elsewhere on the carcass there may be bruises and discolorations of the flesh showing not more than a slightly reddened color the aggregate area of which does not exceed the area of a circle $\frac{1}{2}$ inch in diameter, except that, with respect to any turkey or goose carcass, such aggregate area does not exceed the area of a circle 1 inch in diameter. The carcass is free from skin bruises, on the breast and legs, the aggregate area of which exceeds the area of a circle $\frac{1}{2}$ inch in diameter, and from skin bruises, elsewhere on the carcass, the aggregate area of which exceeds the area of a circle $\frac{3}{4}$ inch in diameter. With respect to any turkey or goose carcass, such aggregate area on the breast and legs does not exceed the area of a circle $\frac{3}{4}$ inch in diameter; and elsewhere on the carcass such aggregate area does not exceed the area of a circle $1\frac{1}{2}$ inches in diameter. Notwithstanding the foregoing, the total aggregate area, on the breast and legs, of all such

flesh bruises, skin bruises, and all other discolorations and blemishes of the skin, is not in excess of the area of a circle 1 inch in diameter; and elsewhere on the carcass such total aggregate area is not in excess of the area of a circle $1\frac{1}{2}$ inches in diameter. Furthermore, with respect to any turkey or goose carcass, such total aggregate area on the breast and legs is not in excess of the area of a circle 2 inches in diameter; and elsewhere on the carcass such total aggregate area is not in excess of the area of a circle 3 inches in diameter. The skin may show only slight reddening in the feather follicles on the neck, near the head, and on the wings because of improper bleeding.

(vii) Shows only slight freezer burn, or evidence thereof (i. e., a few pockmarks, or evidence thereof, none of which exceeds the area of a circle $\frac{1}{8}$ inch in diameter).

(2) *B Quality.* To be of B Quality the carcass:

(i) Is of at least practically normal physical conformation except that it may have a dented, curved, and slightly crooked breastbone which does not seriously interfere with the normal distribution of flesh. The carcass may also have a moderately crooked back or misshapen legs or misshapen wings.

(ii) Is sufficiently well-fleshed on the breast and legs so as to prevent a thin appearance and a prominent breastbone; however, a young tom turkey may have a pouchy, thick, and somewhat flabby skin on the forepart of the breast.

(iii) Has a sufficient coverage of fat on the breast and legs to prevent a distinct appearance of the flesh through the skin.

(iv) Has not more than a slight scattering of pinfeathers and vestigial feathers over the entire carcass with only relatively few on the breast, if the carcass is dressed poultry. If the carcass is ready-to-cook poultry, it is free from protruding pinfeathers, but may have not more than a few scattered nonprotruding pinfeathers and vestigial feathers.

(v) Is free from tears and cuts, on the breast and legs, the aggregate length of which exceeds $1\frac{1}{2}$ inches; however, elsewhere on the carcass there may be tears and cuts (exclusive of the cuts usually made to remove the neck and viscera in the production of eviscerated poultry), the aggregate length of which does not exceed 3 inches except that, with respect to any turkey or goose carcass, such aggregate lengths do not exceed 3 inches on the breast and legs and 6 inches elsewhere on the carcass. There are no sewn tears or cuts. The carcass may have not more than a total of 2 disjointed bones in either the legs or wings, or both, but only if there is no evidence of a related bruise or blood clot, and, in addition, 1 broken bone in a leg or wing, but only if it is nonprotruding and does not show an excessive related bruise or blood clot. The wing tips may have been removed.

(vi) Is free from bruises and discolorations, of the flesh on the breast and legs, showing not more than a slightly darkened color and which in the aggregate is in excess of the area of a circle $\frac{1}{2}$ inch in diameter; however, elsewhere on the carcass there may be bruises and discolorations of the flesh the aggregate area of which does not exceed the area of a circle $1\frac{1}{2}$ inches in diameter, except that, with respect to any turkey or goose carcass, such aggregate area on the breast and legs does not exceed the area of a circle 1 inch in diameter, and, elsewhere on the carcass, it does not exceed the area of a circle 3 inches in diameter. The carcass is free from skin bruises, on the breast and legs, the aggregate area of which exceeds the area of a circle $\frac{3}{4}$ inch in diameter, and from skin bruises, elsewhere on the carcass, the aggregate area of which exceeds the area of a circle $1\frac{1}{2}$ inches in diameter. With respect to any turkey or goose carcass, such aggregate area on the breast and legs does not exceed the area of a circle $1\frac{1}{2}$ inches in diameter, and, elsewhere on the carcass, such aggregate area does not exceed the area of a circle 3 inches in diameter. Notwithstanding the foregoing, the total aggregate area on the breast and legs of all such flesh bruises, skin bruises, and all other discolorations and blemishes of the skin is not in excess of the area of a circle $1\frac{1}{2}$ inches in diameter; and elsewhere on the carcass such total aggregate area is not in excess of the area of a circle 3 inches in diameter. Furthermore, with respect to any turkey or goose carcass, such total aggregate area on the breast and legs is not in excess of the area of a circle 3 inches in diameter; and elsewhere on the carcass such total aggregate area is not in excess of the area of a circle 6 inches in diameter. The skin may show not more than moderate reddening in the feather follicles on the neck, near the head, and on the wings and thighs because of improper bleeding.

(vii) Shows no more than moderate freezer burn, or evidence thereof, on any part of the carcass and no dried area in excess of the area of a circle $\frac{1}{2}$ inch in diameter.

(3) *C Quality.* A carcass that does not meet the requirements of B Quality may be of C Quality and such carcass may:

(i) Be of abnormal physical conformation (i. e., possess serious abnormal physical conditions, including, but not being limited to, a crooked breastbone) if it is fairly well-fleshed.

(ii) Be poorly fleshed and a young tom turkey may have a thick, coarse skin and extended breast that is pouchy or flabby.

(iii) Be lacking in fat covering, over all parts of the carcass.

(iv) Have numerous pinfeathers and vestigial feathers scattered over the entire carcass, if the carcass is dressed poultry; if ready-to-cook poultry, the carcass is free from protruding pinfeathers but may have a few vestigial feathers and may have nonprotruding pinfeathers that do not seriously detract from the appearance of the carcass.

(v) Have torn skin, disjointed bones, and broken bones but only if there is no evidence of a related severe bruise or blood clot. There are no sewn tears or cuts. Wing tips may have been removed.

(vi) Have numerous and large discolored areas or blemishes of the skin which may be accompanied by some reddening and darkening of the flesh beneath, if such discolored areas and blemishes do not render any part of the carcass unfit for food.

(vii) Show more than moderate freezer burn or evidence thereof (including, but not being limited to, numerous pockmarks or large dried areas) on any part of the carcass.

§ 70.105 *United States grades for dressed poultry and ready-to-cook poultry*—(a) *General*. (1) The United States grades for dressed poultry and ready-to-cook poultry are applicable to dressed poultry and ready-to-cook poultry of the kinds and classes set forth in § 70.101 when individual carcasses are not separately identified and are based upon the United States standards for quality set forth in § 70.104 except the provisions in paragraph (a) (3) of that section.

(2) When any lot of dressed poultry is graded on the basis of an examination of each carcass in a representative sample thereof, any carcass that would be of A Quality, if it did not possess any of the following conditions shall, for the purpose of this section, be considered as being of B Quality: Dirty or bloody head or carcass, dirty feet or vent, fan feathers, or neck feathers or garter feathers, or feed in the crop. Any carcass that would be of B Quality or C Quality if it did not possess any of the foregoing conditions shall, for the purpose of this section, be considered as being of C Quality.

(3) All terms in the United States standards for quality set forth in § 70.104 shall, when used in this section, have the same meaning as when used in the standards.

(4) The suggested weight specifications for dressed poultry and ready-to-cook poultry contained in paragraph (c) of this section are not incorporated in the grades for dressed poultry and ready-to-cook poultry since weight, as such, is not a factor of grade for the purpose of this section. It is recommended, however, that each container of dressed poultry and ready-to-cook poultry contain carcasses of the weights specified in paragraph (c) of this section.

(b) *Grades*—(1)

U. S. Grade A. Any lot of dressed poultry or ready-to-cook poultry composed of one or more containers of carcasses of the same kind and class may be designated as U. S. Grade A if not less than 90 percent, by count, of the carcasses in such lot are of A Quality, the remainder is of B Quality, and no individual container in such lot contains more carcasses of B Quality than in the proportion of 2 to each 12 carcasses in the container.

(2) *U. S. Grade B*. Any lot of dressed poultry or ready-to-cook poultry composed of one or more containers of carcasses of the same kind and class may be designated as U. S. Grade B if not less than 90 percent, by count, of the carcasses in such lot are of at least B Quality, the remainder is of C Quality, and no individual container in such lot contains more carcasses of C Quality than in the proportion of 2 to each 12 carcasses in the container.

(3) *U. S. Grade C*. Any lot of dressed poultry or ready-to-cook poultry may be designated as U. S. Grade C if it consists of carcasses of not less than C Quality.

(c) *Suggested weight specifications for dressed poultry and ready-to-cook poultry*. The suggested weight specifications for dressed poultry and ready-to-cook poultry are contained in Tables I, II, III, and IV in this paragraph.

DRESSED POULTRY

TABLE I—CHICKENS

Class of chickens	Weight range per carcass		Weight range per dozen carcasses	
	Minimum	Maximum	Minimum	Maximum
Broilers or fryers	None	1 pound 8 ounces	None	18 pounds
	Over 1 pound 8 ounces	2 pounds	Over 18 pounds	24 pounds
	Over 2 pounds	2 pounds 8 ounces	Over 24 pounds	30 pounds
	Over 2 pounds 8 ounces	3 pounds	Over 30 pounds	36 pounds
	Over 3 pounds	3 pounds 8 ounces	Over 36 pounds	42 pounds
Roasters	Over 3 pounds 8 ounces	4 pounds	Over 42 pounds	48 pounds
	Over 4 pounds	3 pounds 8 ounces	Over 36 pounds	42 pounds
	Over 3 pounds 8 ounces	4 pounds	Over 42 pounds	48 pounds
	Over 4 pounds	4 pounds 8 ounces	Over 48 pounds	54 pounds
	Over 4 pounds 8 ounces	5 pounds	Over 54 pounds	60 pounds
Capons	Over 5 pounds	5 pounds 8 ounces	Over 60 pounds	66 pounds
	Over 5 pounds 8 ounces	None	Over 66 pounds	None
	None	6 pounds	None	72 pounds
	Over 6 pounds	7 pounds	Over 72 pounds	84 pounds
	Over 7 pounds	8 pounds	Over 84 pounds	96 pounds
Stags	Over 8 pounds	9 pounds	Over 96 pounds	108 pounds
	Over 9 pounds	10 pounds	Over 108 pounds	120 pounds
	Over 10 pounds	None	Over 120 pounds	None
	None	3 pounds	None	36 pounds
	Over 3 pounds	4 pounds	Over 36 pounds	48 pounds
Cocks	Over 4 pounds	5 pounds	Over 48 pounds	60 pounds
	Over 5 pounds	6 pounds	Over 60 pounds	72 pounds
	Over 6 pounds	None	Over 72 pounds	None
	None	4 pounds	None	48 pounds
	Over 4 pounds	5 pounds	Over 48 pounds	60 pounds
Hens or stewing chickens or fowl	Over 5 pounds	6 pounds	Over 60 pounds	72 pounds
	Over 6 pounds	None	Over 72 pounds	None
	None	3 pounds	None	36 pounds
	Over 3 pounds	3 pounds 8 ounces	Over 36 pounds	42 pounds
	Over 3 pounds 8 ounces	4 pounds	Over 42 pounds	48 pounds

TABLE II—TURKEYS

Class	Weight range per carcass	
	Minimum	Maximum
Turkey fryers or roasters	None	6 pounds
	Over 6 pounds	8 pounds
	Over 8 pounds	10 pounds
	None	6 pounds
	Over 6 pounds	8 pounds
Young hen turkeys or young tom turkeys	Over 8 pounds	10 pounds
	Over 10 pounds	12 pounds
	Over 12 pounds	14 pounds
	Over 14 pounds	16 pounds
	Over 16 pounds	18 pounds
Hen turkeys or tom turkeys	Over 18 pounds	20 pounds
	Over 20 pounds	22 pounds
	Over 22 pounds	24 pounds
	Over 24 pounds	None
	None	10 pounds

TABLE III—DUCKS, GEESE, GUINEAS, SQUABS, AND PIGEONS

Kind and class	Weight range per carcass		Weight range per dozen carcasses	
	Minimum	Maximum	Minimum	Maximum
Ducks (all classes)	None	4 pounds	None	48 pounds
	Over 4 pounds	5 pounds	Over 48 pounds	60 pounds
	Over 5 pounds	None	Over 60 pounds	None
Geese (all classes)	None	8 pounds	None	96 pounds
	Over 8 pounds	10 pounds	Over 96 pounds	120 pounds
	Over 10 pounds	None	Over 120 pounds	None
Guineas (all classes)	None	1 pound 8 ounces	None	18 pounds
	Over 1 pound 8 ounces	2 pounds 4 ounces	Over 18 pounds	27 pounds
	Over 2 pounds 4 ounces	None	Over 27 pounds	None
Squabs and pigeons	None	8 ounces	None	8 pounds
	Over 8 ounces	11 ounces	Over 8 pounds	8 pounds 6 ounces
	Over 11 ounces	14 ounces	Over 8 pounds 6 ounces	10 pounds 8 ounces

TABLE IV—READY-TO-COOK POULTRY

Kinds and classes	Weight range per carcass	
	Minimum	Maximum
Broilers or fryers	None	1 pound 8 ounces.
	Over 1 pound 8 ounces	2 pounds.
	Over 2 pounds	2 pounds 8 ounces
	Over 2 pounds 8 ounces	3 pounds.
	Over 3 pounds	3 pounds 8 ounces
Roasters	Over 2 pounds 8 ounces	3 pounds.
	Over 3 pounds	3 pounds 8 ounces
	Over 3 pounds 8 ounces	4 pounds.
	Over 4 pounds	4 pounds 8 ounces.
	Over 4 pounds 8 ounces	5 pounds.
Hens or stewing chickens or fowl	Over 5 pounds	None.
	None	2 pounds.
	Over 2 pounds	2 pounds 8 ounces.
	Over 2 pounds 8 ounces	3 pounds.
	Over 3 pounds	3 pounds 8 ounces.
Cocks or old roasters	Over 3 pounds 8 ounces	4 pounds.
	Over 4 pounds	4 pounds 8 ounces.
	Over 4 pounds 8 ounces	5 pounds.
	Over 5 pounds	5 pounds 8 ounces
	Over 5 pounds 8 ounces	None.
Turkeys and geese (all classes)	None	2 pounds 8 ounces
	Over 2 pounds 8 ounces	3 pounds 8 ounces
	Over 3 pounds 8 ounces	4 pounds 8 ounces
	Over 4 pounds 8 ounces	5 pounds 8 ounces
	Over 5 pounds 8 ounces	None.
	None	4 pounds.
	Over 4 pounds	6 pounds.
	Over 6 pounds	8 pounds.
	Over 8 pounds	10 pounds
	Over 10 pounds	12 pounds.
Ducks (all classes)	Over 12 pounds	14 pounds
	Over 14 pounds	16 pounds.
	Over 16 pounds	18 pounds.
	Over 18 pounds	20 pounds.
	Over 20 pounds	None.
	None	3 pounds.
Guineas (all classes)	Over 3 pounds	3 pounds 8 ounces.
	Over 3 pounds 8 ounces	4 pounds.
	Over 4 pounds	None.
	None	12 ounces.
Pigeons (all classes)	Over 12 ounces	1 pound.
	Over 1 pound	1 pound 4 ounces.
	Over 1 pound 4 ounces	1 pound 8 ounces.
	Over 1 pound 8 ounces	None.
	None	6 ounces.

for ready-to-cook poultry may be used only when the product is identified as having been inspected by Federal inspectors or by inspectors of any other inspection system acceptable to the Administrator. The grade mark illustrated in Figure 1 of this section may, until July 1, 1953, be used to officially identify graded dressed poultry; *Provided*, That the word "dressed" is used in lieu of the words "ready-to-cook" and the other applicable information required in this paragraph is contained within the grade mark.

Example of Grade Mark for Ready-to-Cook Poultry



FIGURE 1.

(b) *Form of inspection mark.* The inspection mark approved for use on inspected and certified edible products shall be contained within a circle and contain the following wording: "Inspected for Wholesomeness by U. S. Department of Agriculture." The form and arrangement of such wording shall be as indicated in the example in Figure 2 hereof. In addition, the plant number of the official plant shall be set forth if it does not appear on the packaging material.

Example



FIGURE 2.

SUBPART C—FORMS AND INSTRUCTIONS

Notice is hereby given of the authorized forms, designs and wording which are approved to be used as official identification with respect to graded products and inspected and certified products, pursuant to § 70.11 *Identifying and marking products* of the rules governing the grading and inspection of poultry and edible products thereof (7 CFR Part 70; 16 F. R. 5210) which were issued pursuant to the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act, 1951 (Pub. Law 759, 81st Cong., approved September 6, 1950).

In order that interested persons may know in advance the authorized forms, designs, and wording of the official identification which will be approved for use in connection with graded products and inspected and certified products, it has been deemed advisable to set forth herein the examples of the various grade marks and inspection marks which are satisfactory to the Administration.

§ 70.201 *Forms of official identification.* Subject to the requirements in § 70.11 *Identifying and marking products* of the rules governing the grading and inspection of poultry, and edible products thereof:

(a) *Form of grade mark.* The grade mark approved for use, pursuant to § 70.11 (b), on a graded product shall be contained within a shield of the form and design indicated in the example in Figure 1 of this section. The information (including the form and arrangement of its wording) which is required in such mark shall be: (1) The class of the product or whether the product is "young," or "mature" (or "old"); (2) the phrase "ready-to-cook"; (3) its U. S. grade, and (4) one of the following phrases: "Federal-State graded," "Government graded," or any other similar phrase which may be approved by the Administrator. In addition, the plant number of the official plant shall be set forth if it does not appear on the packaging material. Such other material as the Administrator may approve may also be included within such shield. However, the grade mark

(c) *Combined form of grade mark and inspection mark.* With respect to any product which was inspected and graded, a combined form of grade mark and inspection mark is approved for use pur-

Example



FIGURE 3

suant to § 70.11 (b) and (c) of the regulations. Such combination form

shall contain applicable wording and be of the form and design as indicated in the example in Figure 3 hereof. In addition, the plant number of the official plant shall be set forth if it does not appear on the packaging material. Such other material as the Administrator may approve may be included as a part of the combined form of grade mark and inspection mark. Separate forms of the grade mark and the inspection mark may be used in lieu of the combined form of grade mark and inspection mark.

(d) *Identification of certain dressed poultry.* With respect to dressed poultry which has been graded or inspected for condition only, the form of identification approved for use shall contain the wording "Dressed Poultry Processed Under USDA Sanitary Standards—Not USDA Graded for Quality or USDA Inspected for Wholesomeness". All labels with such identification shall set forth the applicable plant number and shall be marked with a lot number which shall be the number of the day of the year on which the poultry was slaughtered. This identification shall be printed on the label and shall not be applied by means of a stencil or a rubber stamp. A rubber stamp may be used to insert the plant number and the lot

number within the official mark provided such numbers are applied legibly. The required wording shall be set forth in the manner indicated in Figure 4 of this section and within a rectangle of the form and design illustrated.

Example

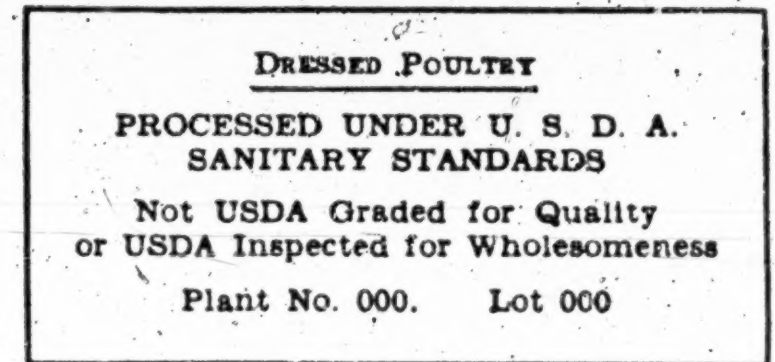


FIGURE 4.

(Sec. 205, 60 Stat. 1090, Pub. Law 451, 82d Cong.; 7 U. S. C. 1624)

Issued at Washington, D. C., this 9th day of April 1953.

[SEAL]

EZRA TAFT BENSON,
Secretary of Agriculture.

[F. R. Doc. 53-3176; Filed, Apr. 13, 1953.]

JUN 17 1955

HAROLD S. WILLEY, Clerk

IN THE
Supreme Court of the United States
October Term 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC., GILLETTE
MOTOR TRANSPORT, INC., JONES TRUCK LINES, INC.,
AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Appellants

v.

FROZEN FOOD EXPRESS, SECRETARY OF AGRICULTURE OF
THE UNITED STATES, ET AL., *Appellees*

Appeal from the United States District Court for the
Southern District of Texas, Houston Division

JURISDICTIONAL STATEMENT

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IN THE
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October Term 1955

No. 162

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Appellants

V.

FROZEN FOOD EXPRESS, SECRETARY OF AGRICULTURE OF
THE UNITED STATES, ET AL., *Appellees*

Appeal from the United States District Court for the
Southern District of Texas, Houston Division

JURISDICTIONAL STATEMENT

In accordance with Rule 15 of the Revised Rules of the Supreme Court of the United States, East Texas Motor Freight Lines, Inc., Gillette Motor Transport, Inc., Jones Truck Lines, Inc. American Trucking Associations, Inc., The Common Carrier Irregular Route Conference of American Trucking Associations and The Contract Carrier Conference of American Truck-

ing Associations, all intervenors in defense of the order of the Interstate Commerce Commission in the Court below, present this their statement as to Jurisdiction, and in support thereof, respectfully state:

OPINIONS BELOW

(a) The opinion of the United States District Court for the Southern District of Texas, Houston Division, is reported at 128 F. Supp. 374. That opinion is reprinted herein as Appendix "A".

The report and order of the Interstate Commerce Commission, which was the subject matter of the suit in the lower court, is reported at 62 M.C.C. 646. That report is reprinted herein as Appendix "B".

JURISDICTION

(b) (i) Appellee, Frozen Food Express, instituted the suit before the United States District Court on August 2, 1954, under the provisions of Sections 1336, 1398, and 2321 to 2325 of the Judicial Code (28 U.S.C. 1336, 1398, 2284 and 2321 to 2325) and Section 10 of the Administrative Procedure Act (5 U.S.C. 1009).

Appellee, The Secretary of Agriculture for the United States moved for leave to intervene and filed his complaint against the Interstate Commerce Commission under the provisions of Section 205 (g) of the Interstate Commerce Act (49 U.S.C. 305 (g)), Section 10 of the Administrative Procedure Act, (5 U.S.C. 1009) and Sections 1336, 1398, 2284 and 2321 to 2325 inclusive, of the Judicial Code, (28 U.S.C. 1336,) 1398, 2284 and 2321 to 2325, and Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291). The District Court allowed intervention by the Secretary of Agriculture.

This appeal seeks review of the action of the District Court enjoining the Interstate Commerce Commission from enforcing that portion of the Commission order requiring Frozen Food Express to cease and desist from transporting fresh and frozen dressed poultry in interstate commerce for compensation to, from and between points where the latter does not hold operating authority issued by the Interstate Commerce Commission.

(ii) The judgment on the action was entered by the District Court on February 23, 1955 and is reproduced herein as Appendix "C". Notice of Appeal to this Court was filed on April 20, 1955, with the Clerk of the United States District Court for the Southern District of Texas.

(iii) The jurisdiction of this Court is invoked under the provisions of section 1253 of the Judicial Code (28 U.S.C. 1253).

(iv) The jurisdiction of this Court is believed to be sustained by a number of decisions of this Court, including:

U. S. v. Baltimore and Ohio R. Co., 333 U.S. 169; 68 S. Ct. 494; 92 L. Ed. 618

U. S. v. Hancock Truck Lines, 324 U.S. 774; 65 S. Ct. 1003; 89 L. Ed. 1357

Radio Corporation of America v. U. S., 341 U.S. 412; 71 S. Ct. 806; 95 L. Ed. 1062.

American Trucking Ass'n. Inc., v. U. S., 344 U.S. 298; 73 S. Ct. 307; 97 L. Ed. 337

STATUTE INVOLVED

The essential issues decided by the Interstate Commerce Commission and by the lower court in the proceedings giving rise to this appeal required construc-

4

tion and application of Section 203 (b) (6) of Part II of the Interstate Commerce Act. (49 U.S.C. 303(b)(6)). A number of the provisions of the Interstate Commerce Act, (49 U. S. Code, 301, et seq) are involved in this appeal, including 203(b)(6), 206(a), 209(a), and 222(b) (49 U.S.C. 303(b)(6), 306(a), 309(a) and 322(b)). The National Transportation Policy and certain terms of Section 203(b)(6), being directly before this court for interpretation and application, are set forth verbatim.

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. *All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.* (Emphasis added)

The Agricultural Commodity Exemption

Title 49 U.S. Code Section 303 (b) (6) :

Nothing in this part, except the provisions of Section 204 relative to qualifications, and maximum hours of service of employees, and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *

QUESTIONS PRESENTED

(c) The questions presented by this appeal are:

- (1) Whether the United States District Court erred in holding that fresh and frozen dressed poultry are agricultural products and not manufactured products thereof, and; therefore within the exemptive language of Section 203(b) (6) of the Interstate Commerce Act.
- (2) (a) Whether the United States District Court exceeded its authority in setting aside, in part, an order of the Interstate Commerce Commission which was supported by adequate findings of fact, in turn supported by substantial evidence and correct conclusions of law.
- (b) Subsidiary to the preceding questions is whether the Commission's order entered in Docket No. MC-C-1605—*East Texas Motor Freight Lines, Inc. et al. v. Frozen Food Express*, 62 M.C.C. 646 is supported by substantial evidence, adequate findings of fact and correct conclusions of law.

- (3) Whether the United States District Court erred in failing to sustain the Interstate Commerce Commission's finding of fact that fresh and frozen dressed poultry constituted "manufactured" products of an agricultural commodity and hence do not fall within the exemption of Section 203(b)(6) of the Interstate Commerce Act.

STATEMENT OF THE CASE

On December 23, 1953, East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., appellants herein, pursuant to the provisions of Section 204(c) of Part II of the Interstate Commerce Act (49 U.S.C. 304(c)), filed with the Interstate Commerce Commission their complaint alleging that Frozen Food Express, appellee herein, was engaged in the for-hire interstate transportation of fresh and frozen meats, meat products, and dressed poultry, to, from, and between points in the United States not authorized in its certificates of public convenience and necessity. The Commission was requested to issue an order requiring Frozen Food Express to cease and desist from the allegedly unlawful operations. On February 25, 1954, all parties to the complaint proceeding before the Commission submitted a stipulation of facts, accompanied by certain documentary evidence in exhibit form. The stipulated facts and exhibits constituted the record both before the Commission and the District Court.

The ultimate issue before the Commission was whether the operations complained of came within the exemption provisions of section 203(b)(6) and could, as a result, be performed lawfully in the absence of a

certificate of public convenience and necessity or permit from the Commission. By report, dated July 13, 1954 (Appendix B); the Commission found and concluded:

(1) that the exemption of vehicles used in carrying "ordinary livestock" does not extend to fresh or frozen meats, the products of the slaughter of such livestock; (2) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including the manufactured products thereof)" does not embrace vehicles used in carrying ordinary livestock in view of the specific exemptions in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including manufactured products thereof)" does not in any event extend to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry.

In accordance with its findings and conclusions, the Commission entered an order requiring the defendant Frozen Food Express to cease and desist from all motor carrier operations in interstate and foreign commerce found in the report of the Commission to be unlawful.

On August 2, 1954, appellee Frozen Food Express instituted an action in the court below in which it sought to have set aside and annulled in its entirety the order of the Commission. In that suit no attack was made on the Commission's action with respect to the adequacy of the Commission's findings nor the sufficiency or substantiality of the evidence. The sole contention was that the Commission erred as a matter of law in its construction and application of the pro-

visions of 203(b)(6). At the trial below, the Interstate Commerce Commission, together with appellants herein and other intervening defendants including certain railroads, defended the Commission's order; however, the statutory defendant, the Attorney General of the United States, refused to defend the action of the Commission and joined the intervening plaintiff, the Secretary of Agriculture, in the latter's contention that the provisions of the statute in question should have been construed by the Commission so as to exempt from the certificate requirements of the Act motor vehicles engaged in the transportation of fresh and frozen meat and fresh and frozen poultry.

The court below consolidated for consideration and disposition the instant proceeding with a companion case, also styled *Frozen Food Express, et al, v. U.S., et al*; and docketed in the District Court as Civil Action No. 8285. The lower court's opinion in the latter proceeding is reprinted herein as Appendix "A". It should be noted that the decision of the District Court in the companion case also has been appealed to this Court.

As may be seen from Appendix "A", the lower court agreed with the Interstate Commerce Commission in the latter's holding that motor vehicles engaged in interstate for-hire transportation of fresh and frozen meat and meat products were not within the exemptive language, but on the strength of *I.C.C. v. Krobin*, 133 F. Supp. 599; 212 F. 2d 555, refused to accept the Commission's determination with respect to fresh and frozen dressed poultry and accordingly set aside that part of the Commission's order restraining the plaintiff from transporting dressed poultry in the absence of authority from the Commission.

THE QUESTIONS ARE SUBSTANTIAL

(a) The Need for Certainty

Among other issues, this appeal presents to the court a question requiring definitive interpretation and application of the language of an important section of the Interstate Commerce Act. The precise question presented is whether fresh and frozen dressed poultry is an "agricultural commodity" and not a "manufactured product thereof." Whether the vast amount of processed poultry now moving by motor carrier in interstate commerce is exempt from the certificate and economic regulation of the Interstate Commerce Commission depends entirely upon this court's final resolution of the question stated. The statutory terms involved have been generally recognized by the lower federal courts, the Interstate Commerce Commission, the executive departments of the government, and by those members of the public affected by the statute as ambiguous in the extreme and immensely difficult of interpretation. The District Court in *I.C.C. v. Weldon*, 90 F. Supp. 873 understated the situation in observing: (page 875) "The problem is not entirely free from difficulty. * * * " A review of the administrative and judicial proceedings requiring construction of the exemptive language reveals that the words of the statute have provoked not only confusion and uncertainty among members of the regulated transportation industry but they have also given rise to sharp differences in the application of the law by the executive and legislative agencies of the government. Notwithstanding the fact that Section 203(b)(6) of the Interstate Commerce Act has been law for almost two decades, the uncertainty, doubt and confusion concerning its meaning and scope, rather than diminishing during

that period of administration, has constantly increased. There now exists greater doubt than ever before as to what commodities are embraced within the statutory terms. This Court was requested by the Interstate Commerce Commission during this term, by a petition for writ of certiorari in *I.C.C. v. Kroblin*, case No. 264 to reduce the area of uncertainty and doubt as to the scope of the exemption. However, the petition for writ of certiorari was denied on October 14, 1954 — U.S. — 99 L. ed. (Advance p. 35). As a result, the uncertainties created by the United States District Court for the Northern District of Iowa and the United States Court of Appeals for the Eighth Circuit by their opinions in *I.C.C. v. Kroblin*, 90 F. Supp. 83 and 212 F. (2d) 555 have led to additional litigation both before the Interstate Commerce Commission and the federal courts in which the moving parties seek to further broaden the so-called agricultural commodity exemption. For example, there is presently pending before the Interstate Commerce Commission an application proceeding entitled *Application of W. W. Hughes, d/b/a W. W. Hughes Refrigerated Service*, MC-105782, Sub 3. The applicant, contending that the operations proposed are exempt and therefore do not require a certificate, has moved that the Commission dismiss the application. In support of the applicant's motion to dismiss, he has urged the Commission on the authority of the *Kroblin* decision to hold that such food products as frozen prepared fruit and vegetables (including frozen french fried potatoes and frozen candied sweet potatoes), frozen meats (including frozen hamburger patties and buttered beef steaks), frozen fish and frozen seafood products (including deviled crabs, fried scallops, fried shrimp, fried fish fillets, fish sticks and other fish products), are unmanufactured.

During the pendency of the time-consuming and expensive proceedings of the type just described, the non-regulated applicant parties continue to participate in the transportation of the questioned commodities and divert such traffic from those motor carriers who have acquired certificates or permits from the Commission. Because of the uncertain and unsatisfactory state of the law, the regulated carriers know not whether they can lawfully depart from published tariffs and operate beyond the scope of their authorities. At the same time, however, they are powerless to protect their operations and franchises as well as their established "good-will" with the shipping public for the reason that the Department of Justice is unwilling to accept the position of the Commission and enforce the certificate requirements of the Act through criminal prosecutions. Shippers of the questioned commodities are experiencing related problems: So as to remain on equal footing with competitors they naturally desire to take advantage of non-tariff rate situations brought about through the collapse of regulation, yet some are understandably reluctant to go to unregulated carriage in the absence of assurance that non-regulated transportation is lawful and here to stay. Moreover, it can be assumed that the unrest and uncertainty among both carriers and shippers will remain so long as the Interstate Commerce Commission adheres to the position stated in its report supporting the order here under review that "until a *final* decision contrary to the findings in the exemption case is reached by the courts, we adhere to the conclusion that the transportation of fresh and frozen meats and fresh and frozen dressed poultry are subject to the certificate and permit requirements of the Act." (Appendix B)

While the gravity of the situation generally may be sensed from the facts immediately above stated, the importance of the issues presented on this appeal can best be realized through a review of the history of the Interstate Commerce Commission's administration of the section with respect to poultry and by more detailed reference to the *Kroblin Case*.

(b) History of Commission Administration—1935-1952

The Interstate Commerce Commission, during the entire course of its administration of Part II of the Interstate Commerce Act, has held that dressed poultry is not an exempt agricultural commodity. In *Frank Battaglia Common Carrier Application*, 18 M.C.C. 167 (May 1939), the Commission adopted the findings and conclusions recommended by a joint board which denied the grant of the application because of applicant's failure to prove need for the proposed operation, but concluded that butter, cheese, and dressed poultry were manufactured commodities for which authority was required. Subsequent to the *Battaglia Case*, the Commission, in *Monarch Egg Corporation Contract Carrier Application*, 26 M.C.C. 615 (November 1940), held that the transportation of dressed poultry was subject to the certificate requirements of Part II of the Act. The Commission reached similar conclusions in *Ollin W. Allen Common Carrier Application*, 28 M.C.C. 26 (February 1941) and *R. C. McCarthy Contract Carrier Application*, 32 M.C.C. 615 (March 1942).

The *Monarch Egg Case*, *supra*, was reopened by the Commission at the request of the Department of Agriculture and after further hearing the Commission sustained its prior conclusions and again held that dressed poultry could not be considered an unmanufactured

agricultural commodity. *Monarch Egg Corp. Contract Carrier Application*, 44 M.C.C. 15 (October 1944). In support of its conclusions the Commission stated at page 19:

• We found in the prior report that the term "ordinary livestock" embraced poultry as well as cattle, horses, sheep, etc., but that dressed poultry, picked but not drawn, "does not come within the term livestock." In view of the definition of ordinary livestock set forth in Section 20 (11), which the legislative history above-discussed indicates should be applied also to the term as used in Section 203²(b) (6), it is apparent that poultry in any condition is not "ordinary livestock". However, they are raised on the farm, and clearly are included within the broader description "agricultural commodities." It therefore becomes necessary to determine whether poultry which have been killed and picked but not drawn are unmanufactured agricultural commodities within the meaning of the present exemption.

As in the case of shelled pecans and walnuts, there is a complete absence of any showing of the customs and practices obtaining in the marketing of poultry, but certain facts in this connection are so well known that we may take cognizance of them for the purpose of the present determination. It is *common knowledge that, generally, farmers do not kill and pick poultry in marketing it. Probably without exception, or at most with rare exceptions, the commercial killing and dressing of poultry is done by meat-packing companies or by special poultry packers. Its subsequent transportation is under refrigeration. As such, it can no longer be considered an unmanufactured agricultural commodity.* (Emphasis added)

The next reported decision by the Commission was issued in *Determination of Exempt Agricultural Com-*

modities, 52 M.C.C. 511, where it was held by the Commission, at page 557, as follows:

"... we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits and nuts); forest products; *live poultry* and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment have been so changed as to possess new forms, qualities, or properties, or result in combinations.

"We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) includes . . . (9) *live poultry*, namely, chickens, turkeys, ducks, geese, and guineas; . . ." (Emphasis added)

The foregoing cases represent all of those in which the Interstate Commerce Commission, in reported decisions, gave specific consideration to dressed poultry. However, the Commission's interpretation of an application of the provisions of Section 203(b)(6) was continuous and consistent in a countless number of motor carrier application proceedings not reported in the permanent bound volumes of the Commission. Operating authorities involving the transportation of dressed poultry were obtained by a number of motor carriers pursuant to applications filed with and heard by the Interstate Commerce Commission and supported by evidence submitted on behalf of all of the most important meat packers of the country as well as many of the most important commercial poultry processors.

There is nothing revealed in unreported cases of the Commission which would indicate that any of the shipper interests or any carrier applicant ever contended prior to or since the *Determination Case* that dressed poultry should be classified as a so-called exempt commodity. The contention that dressed poultry was within the purview of the exemption was not advanced with any vigor until the year 1948, at which time the Secretary of Agriculture alone urged the Commission to reverse its long-standing position with respect to dressed poultry and classify it as exempt. At this point it is appropriate to point out that no individual commercial poultry processor intervened in the *Determination Case* for the purpose of urging the acceptance of the views of the Secretary of Agriculture with respect to the classification of dressed poultry.

Since no immediate attack had been made on the conclusions reached by the Commission in the *Determination Case*, it had been generally assumed that any question with respect to whether motor vehicles transporting dressed poultry were embraced within the exemptive language had been put to rest. However, on October 17, 1952, the Commission filed a complaint against Allen E. Kroblin, Inc. in the United States District Court for the Northern District of Iowa alleging that the defendant was unlawfully engaged in the transportation of New York dressed and eviscerated poultry in interstate commerce. The relief sought by the Commission was to restrain the defendant from the further performance of the operations complained of until such time as it had acquired appropriate authority from the Interstate Commerce Commission. The District Court refused to grant the injunction on the grounds that the commodities transported by the de-

fendant were unmanufactured agricultural commodities, and, on appeal, was sustained by the United States Circuit Court of Appeals. This Court denied certiorari on October 14, 1954.

Prior to the *Kroblin* decision, the Department of Justice had generally followed the Interstate Commerce Commission's interpretation of the statute with respect to poultry and had subjected to criminal prosecution a number of carriers for engaging in the transportation of dressed poultry without appropriate operating authority from the Commission. On March 19, 1948, in a criminal proceeding of the character mentioned, the United States District Court for the District of Delaware, in *U. S. v. Reed Trucking Co., Inc.* (not reported), the defendant was fined \$250 for transporting dressed poultry without authority. The same Court on October 4, 1950, imposed fines on Reed Trucking Co., Inc. and H & H Poultry Company totaling \$16,300 because the shipper had been granted rate concessions on dressed poultry traffic. Had the traffic been exempt, published rates would not have been required and the prosecutions could not have been brought successfully.

This Court's refusal to grant certiorari in the *Kroblin Case, supra*, apparently has not changed the Commission's position. As indicated earlier, however, a position contrary to that assumed by the Commission is taken by both the Department of Agriculture and the Department of Justice. Both executive departments urged the Court below to reject the holdings of the Commission in their entirety.

The existing conflict in interpretation of the statute between the Department of Justice and the Commis-

... makes it impossible to effectively administer the provision, for while the Commission still requires carriers to obtain certificates, the Department of Justice refuses to prosecute carriers for not having certificates when transporting dressed poultry traffic.

(c) The Questions Presented Are Not Foreclosed By Prior Decisions of This Court.

Two petitions for certiorari have been presented to this Court involving questions concerning the application of Section 203(b)(6). The first case, *Weldon v. I.C.C.*, 188 F. 2d 367; 342 U.S. 827, presented the question of whether motor vehicles used to transport shelled raw peanuts were within the exemption. The second case, *I.C.C. v. Kroblin*, *supra*, presented the question of whether motor vehicles transporting New York dressed poultry were within the exemption. In both cases, this Court denied certiorari leaving the Court of Appeals' decisions in effect. Appellants contend that those decisions are in direct conflict.

In accordance with the decisions of this Court which caution against drawing inferences as to the merits of cases from denials of petitions for writs of certiorari, appellants contend that the cases above cited certainly have not foreclosed the question presented from consideration by this Court. Authority for the position assumed by appellants is contained in *Jurisdiction of the Supreme Court of the United States* by Robertson and Kirkham, 1951 Edition, where it is stated: (Page 603)

The fact that the Supreme Court does not sit as a court of errors and appeals in passing upon applications for writs of certiorari is pointedly emphasized by its practice of giving no reasons, in most cases, for its refusal of the applications. *Gaines v. Washington*, 277 U. S. 81, 87; by its

general practice of entering an order denying the petition and not dismissing it, even though the case be one of which the Supreme Court has no jurisdiction; and by its repeated warnings to the bar that *the denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times, United States v. Carver*, 260 U. S. 482, 490. It is likewise true that a denial of a petition for writ of certiorari, without more, imports no expression of opinion as to the jurisdiction of the Supreme Court to issue the writ, *Ex Parte Bakelite Corporation*, 279 U. S. 438, 448, nor as to the jurisdiction of any other court to entertain a case.

We quote also the same authors' comments with respect to the impropriety of inferring that denial of certiorari terminates consideration of the questions involved by the Supreme Court: (page 605)

The danger with which such indulgence in inference is attended would appear to be sufficiently demonstrated by the not inconsiderable number of cases in which the petition for certiorari has been denied on first application, but has been subsequently granted either on petition for rehearing or *sua sponte*, because of an intervening conflict of decision or because subsequent events imported into the case an element of importance it previously did not possess or because an apparent procedural defect had been cured or shown not to exist. Indeed, where counsel has relied on denials of certiorari in similar cases as a reason for failing to appeal in a subsequent case, the Court has held that such failure was not justified. *Sunal v. Large*, 332 U. S. 174.

(d) The Questions Presented Require for Their Resolution Plenary Consideration With Briefs on the Merits and Oral Argument

The fundamental problem presented in this case is, as earlier stated, one requiring construction of the language of the federal statute. The key terms of the provision in question are not free of ambiguity and, as a consequence, they have provoked considerable litigation before both the federal courts and the Interstate Commerce Commission. Opposing litigants in the various proceedings, conceding the existence of ambiguity in the words of the statute itself, have resorted to the legislative history of the section to support their respective claims as to Congressional intent. Unfortunately, however, the legislative history contains no greater certainty than the statutory terms themselves. It is therefore necessary and appropriate that this Court have the advantage of considering all factors and circumstances leading to the enactment of Part II of the Interstate Commerce Act and particularly the agricultural exemption. Since the provision here in question is but a segment of a complete scheme of regulation for motor transportation in interstate commerce, this Court should have the opportunity of considering the issues presented as they relate to the entire pattern of regulation. Appellants submit that to achieve that end, briefs on the merits and oral argument are necessary.

This case is presented to the Court on appeal and appellants believe that the matters already asserted justify full consideration by the Court. In addition, however, they desire to emphasize that this case has a number of aspects which, based on prior decisions of this Court, would even justify the grant of a writ of certiorari. Those aspects are indicated below.

(1) THERE IS CONFLICT ON THE QUESTION PRESENTED
AMONG THE FIFTH, SIXTH AND EIGHTH CIRCUIT
COURTS OF APPEAL.

Customarily this Court has entertained cases from a lower federal court where it has been shown that the decision sought to be reviewed is in conflict with prior decisions of one or more other Circuit Courts of Appeal. Appellants contend that an analysis of the District Court's decision, although in agreement with the Eighth Circuit in the *Kroblin Case*, is in conflict or at least substantially inconsistent in theory with the *Weldon Case* in the Sixth Circuit Court of Appeals and with *Southwestern Trading Company v. U.S.*, 208 F. 2d 708, from the Fifth Circuit Court of Appeals.

(2) THE DISTRICT COURT'S DECISION REVERSES SETTLED
ADMINISTRATIVE CONSTRUCTION.

Long standing administrative construction by an agency charged with the enforcement of the statute in question has been given great weight by the federal courts and where a lower court has disagreed with administrative interpretation this Court has frequently granted certiorari for the purpose of returning certainty to the law. *Commissioner v. South Texas Lumber Company*, 333 U.S. 496, 499-500; 68 S. Ct. 695; 92 L. Ed. 831. It has been shown that at least with respect to poultry, the Interstate Commerce Commission, for a period of more than 15 years, has consistently construed the provisions of Section 203 (b) (6) so as to require authority for its transportation.

(3) DISPOSITIVE ACTION ON THE QUESTIONS PRESENTED WILL TEND TO LESSEN FURTHER LITIGATION BEFORE THE INTERSTATE COMMERCE COMMISSION AND THE FEDERAL COURTS.

In *Alcoa S. S. Co. v. U.S.*, 338 U.S. 421, 423; 70 S. Ct. 190; 94 L. Ed. 225, this Court stated:

"We granted certiorari because determination of the issue raised here will guide adjustment of a large body of similar claims now pending."

In similar circumstances, certiorari was granted in *Ludecke v. Watkins*, 335 U.S. 160, 162; 68 S. Ct. 1429; 92 L. Ed. 1881, where it was stated by the Court (foot-note 2, page 162):

"We are advised that there are 530 alien enemies ordered to depart from the United States, whose disposition awaits the outcome of this case."

The foregoing cases quite clearly indicate that the reason for fully considering the matters presented was that final resolution by the Supreme Court of the questions involved would tend to eliminate further litigation in the lower courts. Appellants submit that the Supreme Court, by fully disposing of the interpretation question here present, will effectively check a substantial part of the litigation now anticipated under Section 203(b) (6).

CONCLUSION

PROBABLE JURISDICTION SHOULD BE NOTED.

Respectfully submitted,

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Certificate of Service

In compliance with Rules 13 (2) and 33 (1), (2) and (3-b) of the Revised Rules of the Supreme Court of the United States, I, Francis W. McInerny, one of the attorneys for the several Appellants on whose behalf the foregoing Jurisdictional Statement is submitted, and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing document on counsel for the several parties to this proceeding as indicated below.

This, the 17th day of June, 1955.

FRANCIS W. MCINERNY

Copies served in duly addressed envelopes with first-class postage prepaid:

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APPENDIX "A"

FROZEN FOOD EXPRESS, *Plaintiff*,Ezra Taft Benson, Secretary of Agriculture of the United States, *Intervening Plaintiff*,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Defendants*,Common Carrier Irregular Route Conference of American Trucking Association et al., *Intervening Defendants*.

Civ. Nos. 8285, 8396.

United States District Court,
S. D. Texas, Houston Division.

Jan. 26, 1955.

Phinney & Hallman, Carl L. Phinney, Dallas, Tex., for plaintiff.

Stanley N. Barnes, Asst. Atty. Gen. and Charles W. Bucy, Associate Sol., Washington, D. C. for ~~the~~ intervening plaintiff.

Malcolm R. Wilkey, U. S. Atty., Houston, Tex., and Edward M. Reidy, Chief Counsel, and Leo Pou, Associate Counsel, of Interstate Commerce Commission, Washington, D. C., for defendants.

Callaway, Reed, Kidwell & Brooks, Rollo E. Kidwell, Dallas, Tex., Todd, Dillon & Curtiss, Clarence D. Todd, Peter T. Beardsley, Washington, D. C., Baker, Botts, Andrews & Shepherd, J. C. Hutcheson, III, and Edwin N. Bell, Houston, Tex. Macleay & Lynch, David G. Macdonald and Francis W. McNerny, Washington, D. C., Reeder, Gisler & Griffin, Lee Reeder, Kansas City, Mo., J. W. Nisbet, Chicago, Ill., Carl Helmetag, Jr., Philadelphia, Pa., Rice, Carpenter & Carraway, Washington, D. C., Fulbright, Crooker, Freeman, Bates & Jaworski,

W. H. Vaughan, Jr., Houston, Tex., for intervening defendants.

Before HUTCHESON, Chief Circuit Judge, and CONNALLY and KENNERLY, District Judges.

CONNALLY, District Judge.

Filed pursuant to Secs. 1336, 1398, and 2321-2325, of Title 28; to Sec. 1009, of Title 5; and to Sec. 305(g), of Title 49 U.S.C.A., each of the foregoing civil actions attacks and seeks to restrain enforcement of an order of the Interstate Commerce Commission. Presenting the same question of law, and substantial identity of parties, the actions were consolidated for hearing and trial. The question for determination is whether a number of different commodities, as later noted herein, all of which have their origin on the farm or ranch, fall within the scope of the so-called agricultural exemption, Sec. 203(b) (6) of Part II of the Interstate Commerce Act (Title 49 U.S.C.A. § 301 et seq.). By terms of the last-mentioned statute, motor vehicles used in carrying property consisting of "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)", are exempt from Interstate Commerce Commission control (save for minor exceptions not here pertinent). The plaintiff in each of the consolidated actions, being a trucking concern holding a certificate of convenience and necessity from the Commission, desires to carry some or all of the commodities in question, unrestricted by the terms of its own certificate, or by other Commission regulation. Hence the plaintiff, supported to a considerable extent in this contention by the Secretary of Agriculture of the United States, urges upon the Court a broad interpretation of the statutory language "agricultural commodities (not including manufactured products thereof)", which would have the net result of enlarging this so-called agricultural exemption. The Commission, on the other hand, and those intervenors

who align themselves with the Commission, urge upon us that most of the commodities in question, by virtue of the treatment and processing which they receive, either have lost their identity as "agricultural commodities", or have become "manufactured products thereof". The result of this argument is drastically to restrict the scope of the exemption.

Civil Action 8285:

In June, 1948, the Interstate Commerce Commission, of its own motion, instituted a proceeding, being MC-C-968 on its docket, in the nature of an investigation, to determine the meaning and scope of the term "agricultural commodities (not including manufactured products thereof)", as used in the above-mentioned statute. The proceeding was widely noticed in the affected trades and industries. Many interested parties, including the Secretary of Agriculture of the United States, the Commissioners of Agriculture from a number of the States, associations of shippers, motor carriers, and others, intervened. After extended hearings, during which much expert testimony was offered as to the manner and method of cleaning, preparing, packaging, and otherwise processing the various commodities in question, the Commission issued its report and order entitled "Determination of Exempted Agricultural Commodities", 52 I.C.C. Reports, Motor Carrier Cases, 511-566. In such report, the Commission announced its definition of such statutory term,¹ which definition it then undertook to apply to the various commodities under

¹ "In No. MC-C-968, we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203(b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations."

consideration, and enumerated those which it found to come within the statutory language, and those which it found to fall without.² Thereupon, the proceeding was terminated and removed from the Commission docket.

The plaintiff Frozen Food Express was not a party to the proceeding before the Commission. By amended complaint filed here July 12, 1954, plaintiff alleges that it desires to carry agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificate; that the report of April 13, 1951, deprives plaintiff of its right to do so. Alleging that the action of the Commission in entering the report in question, was arbitrary, capricious and unreason-

² "We find that the term 'agricultural commodities' (not including manufactured products thereof) as used in section 203 (b) (6) includes: (1) fruits, berries, and vegetables which remain in their natural state, including those packaged in bags or other containers, but excluding those placed in hermetically sealed containers, those frozen or quick frozen, and those shelled, sliced, shredded or chopped up; (2) fruits, berries, and vegetables dried naturally or artificially; (3) seeds, including inoculated seeds, but not seeds prepared for condiment use or those which have been deawned, scarified or otherwise treated for seeding purposes; (4) forage, hay, straw, corn and sorghum fodder, corn cobs, and stover; (5) (a) hops and castor beans, and (b) leaf tobacco, but excluding redried tobacco leaf; (6) raw peanuts, and other nuts, unshelled; (7) whole grains, namely, wheat, rye, corn, rice, oats, barley and sorghum grain, not including dehulled rice and oats, or pearled barley; (8) (a) cotton in bales or in the seed, (b) cottonseed and flaxseed, and (c) ramie fiber, flax fiber, and hemp fiber; (9) live poultry, namely, chickens, turkeys, ducks, geese, and guineas; (10) milk, cream, and skim milk, including that which has been pasteurized, standardized, milk, homogenized milk and cream, vitamin 'D' milk, and vitamin 'D' skim milk; (11) wool and mohair, excluding cleaned and scoured wool and mohair; (12) eggs, including oiled eggs, but excluding: whole or shelled eggs, frozen or dried eggs, frozen or dried egg yolks, and frozen or dried egg albumin; (13) (a) trees which have been felled and those trimmed, cut to length, peeled or split, but not further processed, and (b) crude resin, maple sap, bark, leaves, Spanish moss, and greenery; (14) sugar cane, sugar beets, honey in the comb, and strained honey."

able, that it constituted an abuse of discretion and a violation of the Commission's statutory powers, the plaintiff here seeks an injunction to restrain the Commission and the United States from enforcing or recognizing the validity of such report; restraining interference with the plaintiff's proposed transportation of such agricultural commodities (not including manufactured products thereof), and seeks an order of this Court declaring the report of the Commission of April 13, 1951, to be null and void.

The Secretary of Agriculture has intervened, denominating himself "Intervening Plaintiff". He makes common cause with plaintiff in contending that a number of commodities³ are within the exemption. Several trucking associations, and some sixty southern and western railroad companies, have intervened. These intervenors take a contrary view, and support the report of the Interstate Commerce Commission.

[1] We are of the opinion that the action may not be maintained, and must be dismissed, for the reason that the report and order of the Interstate Commerce Commission of April 13, 1951, is not an "order" subject to judicial review under any of the statutes cited. The proceeding before the Commission was not an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles*

- ³ (1) Slaughtered meat animals and fresh meats;
 (2) Dressed and cut-up poultry, fresh or frozen;
 (3) Feathers;
 (4) Raw shelled peanuts and raw shelled nuts;
 (5) Hay chopped up fine;
 (6) Cotton linters and cottonseed hulls;
 (7) Frozen cream, frozen skim milk, and frozen milk;
 (8) Seeds which have been deawned, searified, or inoculated."

& S. L. R. Co., 273 U.S. 299, 47 S. Ct. 413, 414, 71 L.Ed. 651, holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unanimous Court there, aptly describes the order in issue here:

"The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege, or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation."

The proponents of jurisdiction here rely upon *Columbia Broadcasting System v. U. S.*, 316 U.S. 407, 62 S. Ct. 1194, 86 L.Ed. 1563. It was there held that an order of the Federal Communications Commission promulgating certain rules and regulations requiring that the Commission deny a license to broadcasting stations under certain circumstances, was subject to judicial review, upon a showing by the complaining party of strong equitable considerations. This authority is clearly distinguishable from the present case. The order there in question was entered in the exercise of the agency's rule-making power. Such orders, together with those fixing rates and those determining controversies before the administrative body, have long been recognized as subject to review, *U. S. v. Los Angeles & S. L. R. Co.*, *supra*.

[2] Likewise, the complaining party there showed an immediate and continuing threat of irreparable injury if the order were not reviewed. It is not so here. The statement of plaintiff that it desires to carry for hire most or all of the commodities on the Commission's proscribed list, and that if it does so, the Commission likely will seek injunctive relief to restrain plaintiff, shows no basis for the intervention of a court of equity. Plaintiff will have an adequate remedy in the event of such interference.

It follows that Civil Action 8285 will be dismissed.

Civil Action 8396:

A complaint was filed December 23, 1953, with the Interstate Commerce Commission by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., charging that Frozen Food Express was and had been engaged in transporting fresh and frozen dressed poultry, and fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food readily admitted that it had been so engaged, but defended on the theory that such products all were within agricultural exemption. The Commission found each of these products not to be within the exemption, and ordered Frozen Food Express to cease and desist from such unauthorized transportation. The present proceeding was filed by Frozen Food Express to review that order.⁴

While the present action was pending in this Court, the Secretary of Agriculture of the United States filed with the Commission his petition for leave to intervene, pursuant to Sec. 1291, of Title 7 U.S.C.A. This request was denied; and the Secretary appears here as "Intervening Plaintiff", contending (1) that the proceedings before the Commission were null and void by reason of the failure

⁴ Plaintiff has abandoned the contention that meat products are within the agricultural exemption, and this commodity will not be further considered here.

of the Commission to notify him of the pendency thereof, Sec. 1291(a), of Title 7 U.S.C.A.; (2) that the proceedings should be remanded to the Commission by reason of its error of law in having denied him leave to intervene; and (3) that the cease and desist order should be enjoined by reason of the alleged error of the Commission in holding fresh and frozen meats, and fresh and frozen dressed poultry, to be beyond the limits of the agricultural exemption.

The rail carriers and trucking associations which intervened in Civil Action 8285, also appear in this action. They support the Commission, and oppose the position taken by the plaintiff and the Secretary of Agriculture.

Armour & Company, being engaged at various points in the United States in the slaughter of livestock and the killing, dressing, and sale of poultry, has intervened, urging that dressed poultry is an exempt commodity, that meat is not.

{3} The position taken by the Secretary of Agriculture that the proceeding before the Commission was null and void in its entirety by reason of the failure of the Commission to give him notice thereof, need not long detain us. The proceeding there was not one with respect to "rates, charges, tariffs, and practices" relating to the transportation of farm products, and hence was not one of which the Secretary was entitled to notice under the statute. Secs. 1291 and 1622, of Title 7 U.S.C.A. *U. S. v. Pennsylvania R. Co.*, 242 U.S. 208, 37 S. Ct. 95, 61 L.Ed. 251; *Baltimore & Ohio R. Co. v. U. S.*, 277 U.S. 291, 292, 48 S. Ct. 520, 72 L.Ed. 885; *Missouri Pac. R. R. Co. v. Norwood*, 283 U.S. 249, 51 S. Ct. 458, 75 L.Ed. 1010. The Commission likewise did not commit an error of law in denying the Secretary's Petition of Intervention, filed there while the present proceeding was pending here.

{4} Most able and exhaustive treatment is given the question now before us, in so far as it concerns dressed

poultry, by Judge Gavin of the United States District Court for the Northern District of Iowa, in *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, 113 F.Supp. 599, 600, affirmed, 8 Cir., 212 F.2d 555, certiorari denied 348 U.S. 836, 75 S. Ct. 49. Reviewing the long struggle between the Interstate Commerce Commission in its efforts to restrict the application of the exemption in question; and the Department of Agriculture and others in seeking to expand it; reviewing the legislative history of the Motor Carrier Act of 1935, and various proposed amendments thereto; and considering the congressional intent which prompted the insertion of the agricultural exemption, Judge Gavin concluded that dressed poultry constituted an "agricultural commodity", and did not constitute a "manufactured product thereof". Hence, such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry.

[5] Counsel for the Commission urges that this Court should disregard the Kroblin case, on the argument that the only question before us is one of the adequacy of the evidence before the Commission. It is said that the order which was entered was one within the general purview of the Commission's authority, and that if its findings are supported by "substantial evidence", this Court has no alternative but to leave it undisturbed. While we do not quarrel with such statement as a general proposition of law, the argument is not convincing in its application to the present record. The primary facts before the Commission were without dispute and were the subject of stipulation. Reduced to simplest form, they showed that before a chicken or duck became "dressed poultry", the bird was killed, his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc. In addition, such "facts" consisted of evidence of so-called "expert" nature, that this treatment or processing of the chicken or duck rendered him a "manufactured product".

[6, 7] It is apparent that there is only one ultimate finding called for, namely, whether under the type of processing reflected by the record, the product falls within the statutory definition. The question then is a mixed one of law and fact; calling for the application of the processes of legal reasoning and of principles of statutory construction. The fact that the Commission's findings are supported by an "expert" who gives his opinion that a dressed chicken is a manufactured product, does not foreclose the question, nor remove it from the scope of judicial review. *Baumgartner v. U. S.*, 322 U.S. 665, 64 S. Ct. 1240, 88 L.Ed. 1525; *Lehmann v. Acheson*, 3 Cir., 206 F.2d 592; *Galena Oaks Corp. v. Scofield*, 5 Cir., 218 F.2d 217.

[8] In our opinion, fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities", and hence is not within the exemption. Since the enactment of Part II of the Interstate Commerce Act in 1935, motor vehicles used exclusively in carrying "livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)", have been exempt. By amendment in 1940, the term "ordinary" was inserted immediately before the word "livestock". The term "ordinary livestock" is defined in Sec. 20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Referring only to the live animals, "ordinary livestock" may not be tortured to include the carcasses of slaughtered meat animals, or the meat which is the product of butchering. Meat has been regarded generally in the industry as a controlled commodity for some twenty years. Congress has dealt with the agricultural exemption on many occasions. Considering the ease with which the Congress might have added appropriate language to evidence its intent to exempt fresh or frozen meat from Interstate Commerce Commission control, if it so desired, the absence

of such language indicates that no such intent was entertained.

Nor may meat, fresh or frozen, be considered an "agricultural commodity" for present purposes. The exemption has treated the live meat animal in a separate generic class from "agricultural commodity" since the enactment of the statute; and if the live animal, on entering the slaughter pen or the packing house, is not an "agricultural commodity", we are unable to see how he becomes one on emerging therefrom in the form of beef or pork. The Commission was correct, in our opinion, in holding fresh and frozen meat to be non-exempt.

The enforcement of the order of the Interstate Commerce Commission, MC-C-1605, East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express, is enjoined and restrained in so far as said order interfered with, enjoins or restrains the plaintiff Frozen Food Express from transporting fresh and frozen dressed poultry in interstate commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation). Other relief sought by plaintiff is denied.

Clerk will notify counsel.

KENNERLY, District Judge (concurring in part and dissenting in part).

I concur with all the foregoing opinion except the decision in Civil Action 8396 with respect to fresh meat and frozen meat. As to that I respectfully dissent.

I think all of Section 303(b) should be given a broad and liberal construction, and that Section 303(b) (6) should be construed as including fresh meat and frozen meat. I think we should not only follow the reasoning of both the District Court and Court of Appeals in the Krobin case with respect to dressed poultry and frozen dressed poultry, but that what is said is also applicable to fresh meats and frozen meats.

APPENDIX "B"**INTERSTATE COMMERCE COMMISSION**

No. MC-C-1605

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL.

v.

FROZEN FOOD EXPRESS

Submitted April 2, 1954. Decided July 13, 1954

Defendant's unauthorized operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry found not to be within the exemption provided in section 203 (b) (6) of the Interstate Commerce Act and to be unlawful. Defendant ordered to cease and desist from performing the service found to be unlawful.

Rollo E. Kidwell, David G. Macdonald, Francis W. McInerney, and Lee Reeder for complainants.

Clarence D. Todd, Dale C. Dillon, and Charles F. Riddle for intervener in support of complainants.

Carl L. Phinney and Leroy Hallman for defendant.

Report of the Commission**BY THE COMMISSION:**

No oral hearing has been held in this proceeding, and it has been submitted on a stipulated statement of facts. In view of the lack of any dispute as to the facts, the clarity of the issues, and the desirability of an early decision, no report of an examiner is deemed necessary.

By complaint filed December 23, 1953, East Texas Motor Freight Lines, a corporation, of Dallas, Tex., Gillette Motor Transport, Inc., of Dallas, and Jones Truck Lines, Inc.,

of Springdale, Ark., hereinafter called East Texas, Gillette, and Jones, respectively, all motor common carriers, allege that the defendant, Frozen Foods Express, of Dallas, a corporation, is, and has been, engaged in the transportation of fresh and frozen meats, meat products, and dressed poultry from, to, and between points not authorized in any certificate held by it. Complainants seek an order requiring defendant to cease and desist from the alleged unauthorized and unlawful operations and such other and further relief as may be considered proper in the premises. By order entered March 4, 1954, the Irregular Route Motor Common Carrier Conference of American Trucking Associations, Inc., hereinafter referred to as the conference, was permitted to intervene in support of complainants.

Complainants transport general commodities over regular routes in an area which includes Illinois, Missouri, Oklahoma, Tennessee, and Texas. Defendant is authorized to transport frozen foods, fresh foods, including fruits and vegetables, packinghouse products, and dairy products, from, to, or between specified points in Arkansas, California, Illinois, Louisiana, Kansas, Michigan, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin. It admits that it has, and now is, engaged in the transportation of fresh and frozen meats and fresh and frozen dressed poultry from and to points not authorized by its certificates. Following is a list of typical shipments transported by defendant beyond the scope of its certificates during September, October, and November, 1953:

Commodity	Weight	Origin	Destination
	<i>Pounds</i>		
Beef and mutton	26,325	San Antonio, Tex....	Cincinnati, Ohio.
Cut-up poultry	25,674	Fayetteville, Ark. . .	Norwood, Ohio.
			Dayton, Ohio.
Dressed poultry	25,276	Bentonville, Ark. . . .	Columbus, Ohio.
Do	23,890	do	Columbus, Ohio.
Fresh beef	23,061	Fort Worth, Tex. . . .	Turlock, Calif.
Frozen turkeys	23,900	Bentonville, Ark. . . .	Toledo, Ohio.
Veal trimmings	29,967	Fort Worth, Tex. . . .	Louisville, Ky.
			Cincinnati, Ohio.

In each such instance no commodity other than that indicated was transported at the same time in the same vehicle.

Defendant, relying upon *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, 113 F. Supp. 599, which was affirmed on appeal, 212 F. (2d) 555, contends that the operations complained of come within the exemption provided by section 203 (b) (6) of the act, and may be performed without specific authority from this Commission. Section 203 (b) (6), so far as here material, provides as follows:

Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of *ordinary livestock*, fish (including shell fish), or *agricultural (including horticultural) commodities (not including manufactured products thereof)*, if such motor vehicles are not used in carrying any other property, or passengers, for compensation. * * *. [Italics supplied.]

We have involved here the transportation of two types of commodities, namely, (1) fresh or frozen dressed poultry and (2) fresh or frozen dressed meat or, more precisely, those packinghouse products derived from the slaughter of ordinary livestock. Although, as will be seen, we conclude that neither type of commodity is within the exemption provided by the statute, the reasoning in support of such conclusion differs as to the two classes of commodities. Obviously the exemption, if any, of vehicles used in the transportation of dressed poultry depends upon whether that commodity is an "agricultural commodity" or a "manufactured product thereof." In the case, however, of dressed livestock of those packinghouse products derived from the slaughter of livestock, that issue is not in our opinion controlling.

As originally enacted in 1935, section 203 (b) (6) exempted transportation performed in "motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)." In 1938 the section was amended to read "motor vehicles used in carrying property consisting of livestock, fish (including shell fish), or agricultural commodities (not including the manufactured products thereof) if such motor vehicles are not used in carrying any other property or passengers for compensation." In 1940 the word "livestock" in the exemption was modified to read "ordinary livestock," a term previously defined in section 20 (11) of the act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

Thus, from the beginning of motor-carrier regulation by us an exemption has been provided in section 203 (b) (6) of vehicles used in carrying of "livestock" or "ordinary livestock," and also in the same section an exemption of vehicles used in the carrying of agricultural commodities." The latter exemption does not duplicate the former nor did it establish a second exemption of vehicles used in carrying ordinary livestock. On the other hand, it must be concluded that the exemption of vehicles used in carrying ordinary livestock ends upon the slaughter of the livestock when it loses its identity as livestock, and that there was no intent in the same section to provide a further or second exemption of vehicles carrying the packinghouse products which result from the slaughter, on the theory that such commodities are "agricultural commodities." A congressional intent, had there been one to exempt the transportation not only of ordinary livestock but also of the products of the slaughter thereof, would unquestionably have been so simple to state that the failure to do so negatives any such strained construction of the language actually used to accomplish that end. This conclusion con-

forms to that made by us in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, hereinafter referred to as the *Exemption* case.

The record herein, apparently for the purpose of demonstrating that fresh meat is in any event a "manufactured product" of an agricultural commodity, describes the slaughtering processes at some length. This evidence as it relates to the processing of livestock is beside the point if our conclusion is correct that the exemption of vehicles used in carrying "agricultural commodities" does not duplicate the exemption of vehicles used in carrying "ordinary livestock." Nevertheless, we shall review it briefly and later we shall refer to other evidence designed to show that fresh and frozen meats which are the products of the slaughter of ordinary livestock are, in any event, manufactured products.

Cattle are raised on farms and ranches and generally are shipped alive by the growers to stockyards operated by, or in conjunction with, meatpacking companies. The slaughtering process begins only after the animals reach the stockyards and consists of (1) holding the cattle in pens, including resting, watering, and feeding, (2) killing, including knocking, shackling, hoisting, and bleeding, (3) skinning and cutting, (4) washing, (5) stamping, scaling, and grading, (6) hot clothing, and (7) chilling. In processing the animals for slaughter, various mechanical and other aids are employed, such as pens, runways, pulleys and chains, overhead conveyors, electric saws, mechanical slides, water heaters, ribbon branders, and chilling systems entailing the use of brine tanks, pumps, and related gear.

Chickens and other poultry intended to be used for food are raised on farms or by so-called "commercial broiler houses." Poultry is raised on farms principally for the production of eggs. Their sale for killing is largely incidental to that production. The commercial broiler

houses, on the other hand, are primarily engaged in producing poultry for food purposes. From 3 to 4 lots are usually raised and marketed during the course of a year. In most instances, chickens, turkeys, and other poultry are shipped alive from the farm or commercial broiler house to the processing plant. Only a small percentage of the total number raised are killed and processed by the grower. The principal exceptions are the Long Island, N. Y., duck industry and certain growers' cooperatives, which carry on all operations incidental to the marketing of dressed poultry including the growing, killing and processing. In the packing plant, the birds are first placed on an endless chain and then carried by the chain through the various stages of processing, which include killing, picking, pinning, singeing, cropping and venting; washing, chilling, eviscerating, packaging, and freezing. Picking is done both by machinery and by hand, the mechanical picker consisting of revolving drums equipped with rubber fingers. In some plants the removal of feathers is accomplished by the use of hot wax. The usual method of chilling is to place the carcasses in metal baskets which are then submerged in tanks of ice water long enough to remove all body heat. In the eviscerating process, the body cavity is cut open and the viscera removed, with the liver, heart, and gizzard being cleaned and replaced in the carcass. The eviscerated poultry is then usually wrapped in waterproof paper and packed with ice in crates or barrels. Various methods of dry wrapping are also employed. The freezing of poultry must be accomplished as rapidly as possible and is generally done in a mechanically refrigerated room in which the temperature is maintained at minus 40° Fahrenheit and the air is circulated at speeds up to 70 miles an hour. After the birds have been frozen by this quick-freeze method, they are placed in cold storage until ready for shipment.

The evidence also contains, in exhibit form, numerous booklets, manuals, pamphlets, and statistical studies pub-

lished in 1929 and later by various Federal agencies, including the Executive Office of the President and United States Departments of Commerce and Labor, indicating that, for industrial classification purposes, the slaughter of livestock, meatpacking, and the dressing of poultry are regarded as manufacturing activities. As examples, in a 1933 publication of the Bureau of the Census, United States Department of Commerce, entitled *Foreign Commerce and Navigation of the United States*, meats are classified as dutiable imports under the listing of "Manufactured Foodstuffs." Four manuals issued by the Bureau of the Budget, Executive Office of the President, in 1940, 1943, 1945, and 1946, variously entitled *Standard Industrial Classification*, *Standard Industrial Classification Manual*, or *Standard Commodity Classification*, all classify meatpacking and poultry dressing as manufacturing industries, and the products thereof as manufactured foods. A 1950 publication of the United States Department of Commerce, entitled *Schedule A Statistical Classification of Imports into the United States* lists fresh and frozen meats and dead, dressed, or undressed poultry as "Meat Products." "Meat Products" is listed under the broader classification of "Agricultural Manufactured Foodstuffs and Beverages."

In the *Exemption* case, we reported the result of an investigation instituted on our own motion into and concerning the meaning of the term "agricultural commodities (not including manufactured products thereof)" as used in section 203 (b) (6). We concluded that the term "agricultural commodities" embraces all products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees, such as milk, wool, eggs, and honey; and that the parenthetical expression "not including manufactured products thereof" has the effect of limiting agricultural commodities to those in their natural

state and those which, as a result of treating or processing, have not acquired new forms, qualities, properties, or combinations. At pages 546 and 547, in discussing the identical questions here in issue, we said:

The words "agricultural commodities (not including manufactured products thereof)" do not include ordinary livestock as the latter are separately mentioned in section 203 (b) (6). Section 20 (11) of the act provides that "The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses." It necessarily follows that the term as used in section 203 (b) (6) has the same meaning. Livestock, such as race horses, show horses, and the like do not come under the classification of "ordinary livestock," and the transportation of animals of this type is subject to the certificate or permit requirements of the act. *Owsley Common Carrier Application*, 31 M. C. C. 778. Poultry, however, are included within the broader description "agricultural commodities." It is clear also that certain products of live animals, such as are embraced in the definition of ordinary livestock, are likewise included; and there is no dispute that wool, at least in the form sheared from the sheep,¹ is an agricultural commodity. These products are in themselves basic agricultural commodities, separate and distinct from the livestock. But slaughtered animals are not embraced in the definition of ordinary livestock and we are impelled to conclude that the products thereof, such as fresh meats and meat products, do not fall within the description "agricultural commodities" as used in section 203 (b) (6). It logically follows that neither killed poultry nor any products thereof come within the term under consideration. We conclude that poultry other than that alive is not an agricultural commodity within the meaning of section 203 (b) (6).

¹ In a report on reconsideration in the *Exemption* case, 62 M. C. C. 87, 89, we found that cleaned or scoured raw wool and mohair and redried tobacco leaf are within the agricultural exemption.

Further, we are of the opinion that birds of the air such as doves and pigeons are not agricultural commodities.

The facts before us in this proceeding are more complete as they relate to this particular issue than were those before us in the *Exemption* case, but they contain nothing to warrant any different conclusions. On the contrary, they confirm the conclusions there reached.

On all the evidence now before us, we conclude (1) that the exemption of vehicles used in carrying "ordinary livestock" does not extend to fresh or frozen meats, the products of the slaughter of such livestock; (2) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including the manufactured products thereof)" does not embrace vehicles used in carrying ordinary livestock in view of the specific exemption in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying "agricultural (including horticultural) commodities (not including manufactured products thereof)" does not in any event extend to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry.

Although on somewhat similar facts, at least with respect to dressing and packing poultry, it was held in the *Kroblin* case that so-called New York-dressed poultry or eviscerated poultry were not "manufactured products" of agricultural commodities within the intent and meaning of section 203 (b) (6), we have not acquiesced in the court's decision, and a review thereof has been sought. Until a final decision contrary to the findings in the *Exemption* case is reached by the courts, we adhere to the conclusion that the transportation of fresh and frozen meats and fresh and frozen dressed poultry are subject to the certificate and permit requirements of the act. In any event, and regardless of the final outcome of the *Kroblin* case, it seems clear that

slaughtered livestock or the products of the slaughter of livestock are neither ordinary livestock nor agricultural commodities as those terms are commonly used and understood. It follows that vehicles used in the transportation of slaughtered livestock or the products of slaughtered livestock do not come within the purview of the exemption in section 203 (b) (6).

The conclusion that fresh and frozen meats, the products of the slaughter of ordinary livestock are not "agricultural commodities" within the meaning of the statute, finds definite support in *Southwestern Trading Co. v. United States*, 208 F. (2d) 708, wherein the Court of Appeals for the Fifth Circuit affirmed on appeal in a criminal proceeding a finding that vehicles used in carrying cowhides were not within the exemption of vehicles engaged in carrying "agricultural commodities." In so doing, the court said:

- In a proceeding before the Interstate Commerce Commission, reported in 52 Motor Carrier Cases 511, the history of the legislation was reviewed, and it was found that the primary purpose of the partial exemption provided in said Section 303 (b) (6) was to aid the farmer in agricultural pursuits; that the words agricultural commodities should be construed in their plain, usual, and commonly accepted sense. The Commission proceeded to group agricultural commodities under three general headings: Those which are produced by plants; those which are produced continually by living animals kept on the farm, such as milk, eggs, and wool; and live poultry. The only group into which cow hides could possibly come would be the products of animals, but it is apparent that cow hides would not be included within this group, as said classification refers only to the commodities which living animals produce continually and with regularity. The hide is a part of the animal, separable only upon its death; it is a product of slaughter only. The Commission specifically found that slaughtered animals were not embraced in the definition of ordinary livestock, and that the products thereof, such as fresh meat and meat products, did not fall within the

description "agricultural commodities" as used in Section 303 (b) (6). It stated that pelts, skins, or green and salted hides, are not agricultural commodities within the meaning of said section. The conclusion reached by the Commission is directly in point here.

Considering all of the evidence of record, we find that defendant's operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry, in interstate or foreign commerce, are not within the exemption provided in section 203 (b) (6) of the act, and that to the extent to which such transportation is not authorized in its certificates, it is unlawful and should be discontinued.

An order will be entered requiring defendant to cease and desist from the performance of the transportation found unlawful herein.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 8396

FROZEN FOOD EXPRESS, ET AL., *Plaintiffs*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, ET AL., *Defendants*.

Judgment

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on November 16, 1954, before a duly constituted three-judge District Court, convened pursuant to Sections 2284 and 2321-2325, Title 28, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on January 26, 1955, filed herein its opinion, containing its findings of fact and conclusions of law; now, in accordance with the said opinion, findings, and conclusions, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

(1) The defendants, the United States of America and the Interstate Commerce Commission, be, and they hereby are, enjoined and restrained from enforcing the order of the said Commission entered July 13, 1954, in a proceeding docketed by the Commission as No. MC-C-1605, and entitled "East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express", insofar as the said order requires the said Frozen Food Express to cease and desist from transporting, or interferes with its transportation of, fresh

and frozen dressed poultry in interstate commerce for compensation unless the motor vehicle used in the carrying of such poultry is at the same time being used to carry for compensation passengers or other property not within the exemption provided in section 203 (b) (6) of the Interstate Commerce Act (49 U.S.C. 303 (b) (6)); and.

(2) All other relief sought by the plaintiffs herein, including the Secretary of Agriculture as intervening plaintiff, be, and the same hereby is, denied.

This the 23rd day of February, 1955.

/s/ JOSEPH C. HUTCHESON, JR.
*Chief Judge, United States
Court of Appeals for the
Fifth Circuit*

/s/ THOMAS M. KENNERLY
United States District Judge

/s/ BEN C. CONNALLY
United States District Judge

No. 162

Office of the Clerk

AUG 1955

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

October Term 1955

EAST TEXAS MOTOR FREIGHT LINES, INC., GILLETTE MOTOR
TRANSPORT, INC., JONES TRUCK LINES, INC., AMERICAN
TRUCKING ASSOCIATIONS, INC., ET AL., *Appellants*,

v.

FROZEN FOOD EXPRESS, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., *Appellees*.

Appeal from the United States District Court for the
Southern District of Texas
Houston Division

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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BRIEF IN OPPOSITION TO MOTION TO AFFIRM

STATEMENT

Pursuant to Rule 16, Paragraph 3, of the revised rules of this Court, appellants, East Texas Motor Freight Lines, Inc., Gillette Motor Transport, Inc., Jones Truck Lines, Inc., American Trucking Associations, Inc., the Common Carrier Conference Irregular Route of American Trucking Associations and the Contract Carrier Conference of American Trucking Associations oppose the motion to affirm of appellees, United States of America and Ezra Taft Benson, Secretary of Agriculture, for the following reasons:

The seemingly narrow question of whether fresh and frozen poultry is a "manufactured" item can be answered properly only in the context of the broader issue of the definition of the term "agricultural (including horticultural) commodities (not including manufactured products thereof)" within the meaning of the partial exemption of Section 203(b)(6) of the Interstate Commerce Act.

Neither the dictionary definition of the word "manufactured" nor the opinions of courts passing on the applicability of taxes or tariffs on manufactured commodities serve to determine the scope of the exemption from the economic regulation of the Interstate Commerce Act afforded by Section 203(b)(6). To say, as the appellees do, that "manufacture implies a change, but every change is not manufacture. . ." is of no help whatever in resolving the issue. To conclude from this nicety of expression, as the appellees have, that "although a chicken admittedly is 'changed' by dressing and freezing, such change is not enough to make it 'a new and different article'; it is still a chicken, albeit a frozen and dressed one," simply serves to confuse it.

The partial exemption of Section 203(b)(6) is intended to facilitate the transportation of agricultural produce. To be sure, it is sufficiently broad to embrace products which have been processed, as ginned cotton or pasteurized milk; however, it does not extend to manufactured commodities which have a farm origin. Freezing, as canning, long has been recognized as such a manufacturing process. That the item manufactured retains its original identity, use and name cannot be so narrowly construed as to obscure the manufacturing process. Beans, when fresh, are deemed to be an exempt agricultural commodity; they become manufactured within the meaning of Section 203(b)(6) when canned or frozen although they retain their original identity, use and name. In the

same way chickens, when canned or frozen become manufactured agricultural products, under Section 203(b)(6) although they may in fact continue to be chickens.

That fresh and frozen dressed poultry are manufactured agricultural products within the meaning of Section 203(b)(6) has been the consistent, well-established construction of the Interstate Commerce Commission, the agency charged with the enforcement of the Interstate Commerce Act. Such construction, based upon findings of fact, should not be overturned except for the most cogent reasons. Indeed, the appellees, United States of America and Secretary of Agriculture, have acquiesced in this construction of the Interstate Commerce Commission. This is manifest following the participation of the Secretary in several rate proceedings before the Commission in which he urged lower truckload rates on dressed poultry without ever contending that these were exempt agricultural commodities and therefore free from rate regulation.¹ The Department of Justice, on the other hand, through the offices of the local United States Attorneys, prosecuted numerous criminal actions against motor carriers for violating the certificate provisions of the Interstate Commerce Act in connection with their unauthorized transportation of dressed poultry.²

The appellees urge that there is no more compelling reason for further review by this Court than there was in *Interstate Commerce Commission v. Kroblin*, 113 F. Supp. 599, aff'd., 212 F. (2d) 555, cert. den., 348 U. S. 836, 75 S. Ct. 49. In their jurisdictional statement, ap-

¹ *Poultry - Delaware to Middle Atlantic States*, I.&S. M-3890, January 14, 1952; *Frozen Foods in Middle Atlantic States*, 53 M.C.C. 117.

² *U. S. v. S.S.D. Trucking Corp.*, (unreported) U.S.D.C., N.D. Ill., March 31, 1953; *U. S. v. Reed Trucking Co., Inc.*, (unreported) U.S.D.C., Del., March 19, 1948.

pellants have asserted, in pari, their reasons for disagreeing with the lower courts' decisions in the *Kroblin* case. Given the opportunity, appellants believe that they can demonstrate to the Court that the decisions of the lower courts in *Kroblin* are inconsistent with the literal terms of the statute as well as the legislative history of the Motor Carrier Act as a whole. It should be pointed out, however, that even if the *Kroblin* decision is ultimately approved by this Court, it could not possibly stand as controlling precedent for the action taken by the lower court in this proceeding. This for the reason that the only commodity before the lower court in *Kroblin* was *fresh* New York dressed poultry, whereas in the proceeding below the District Court had before it for determination the additional and vastly different issue as to whether *frozen* dressed poultry came within the exemptive language. It is appellants' contention that without regard to the state of processing of a commodity otherwise, the act of freezing it constitutes "manufacture" as that term is used in the statute. Freezing has an identity of purpose with canning, namely preservation, and both processes have long been held by the Interstate Commerce Commission to constitute manufacture. For example, more than ten years ago, in *Newton Extension—Frozen Foods*, 43 M. C. C. 787, 789 (October, 1944); the Commission, division 5, clearly indicated that neither canned nor frozen agricultural commodities qualified as exempt under §203(b) (6):

It is clear that agricultural commodities, frozen in the manner hereinabove described, are subjected to a process of manufacture, and that the finished products are as distinct from agricultural commodities as are canned fruits and vegetables, from which both are manufactured.

The identity of purpose of freezing and canning strongly suggests that affirmance of the judgment below will necessarily be followed by exemption from economic and

certificate regulation by the I. C. C. of countless commodities in the fruit, vegetable and seafood field that have been for years conceded to be manufactured, and, therefore, subject to such regulation. That affirmance of the decision below would bring about this result is no groundless fear—in proceedings now pending before the Commission the contention, based upon the decisions of the lower courts in *Kroblin* and the instant proceeding, has been raised that frozen fruits, vegetables and juices,³ frozen prepared fruits and vegetables, frozen eggs and egg yolks, and frozen prepared fish and seafood products⁴ are subject to the §203(b)(6) exemption. Such a broadening of the exempt commodity category, in turn, suggests a complete breakdown of the already largely unsuccessful efforts of the Commission to regulate, for purposes of safety, and otherwise to police the operations of the vast number of so-called exempt carriers engaged in interstate commerce throughout the length and breadth of the land.

This Court should explore the entire question in detail, and it should have the benefit of oral argument and briefs. To be sure, the issue, as here presented, is directly concerned only with the transportation activities of one motor carrier. However, from a practical standpoint determination of the question whether fresh and frozen dressed poultry is a "manufactured" item affects all carriers claiming an exempt status and, as thus magnified, takes on an importance that extends far beyond the immediate problem of whether or not the one motor car-

³ Docket No. MC-C-1562—*Home Transfer & Storage Co., Investigation of Operations*, Div. 5, June 30, 1955.—M. C. C.—Respondent's petition for reconsideration now pending.

⁴ Docket No. 105782 (Sub. No. 3)—Application of W. W. Hughes d/b/a Hughes Refrigerated Service (Examiner's report not yet issued).

rier can transport fresh and frozen dressed poultry free from economic regulation by the Interstate Commerce Commission.

Even if this Court should ultimately decide not to hear argument or allow submission of briefs on the question of the exempt status of fresh or frozen dressed poultry, it should not dispose of the instant case until the broad issue of the definition of the term "agricultural (including horticultural) commodities (not including manufactured products thereof)" within the meaning of the partial exemption of Section 203(b)(6) is before this Court. The proceedings in the companion case, No. 160, *American Trucking Associations, Inc., et al. v. Frozen Food Express, et al.*, potentially present such opportunity. The comprehensive review of the matter of the agricultural exemption that that case may present on remand to the District Court should not be precluded by the unnecessarily speedy decision of this Court in the instant case on the narrow issue of the status of fresh or frozen dressed poultry.

CONCLUSION

For the foregoing reasons, appellants submit that appellees' motion to affirm should be denied, and probable jurisdiction noted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In compliance with Rule 33 of the Revised Rules of the Supreme Court of the United States, I, Peter T. Beardsley, one of the attorneys for the several Appellants on whose behalf the foregoing brief in opposition to motion to affirm is submitted, and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing document on counsel for the several parties to this proceeding as indicated below.

This, the 29th day of August, 1955.

PETER T. BEARDSLEY

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IN THE
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FROZEN FOOD EXPRESS, *Appellant*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE
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INTERSTATE COMMERCE COMMISSION, *Appellant*,

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FROZEN FOOD EXPRESS, *Appellant*,

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UNITED STATES OF AMERICA and INTERSTATE COMMERCE
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On Appeals From the United States District Court for the
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**BRIEF FOR EAST TEXAS MOTOR FREIGHT
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LINES, INC., ET AL.**

PRELIMINARY STATEMENT

In noting probable jurisdiction in these proceedings this Court has recognized the interrelationship of the subject matter and the issues presented by assigning the several cases for consolidated presentation. Accordingly the appellant parties to this brief submit one document consisting of two parts, treating in Part A the matters and issues raised in cases numbered 158,

159, 160, and 161 and in Part B the matters and issues raised in cases numbered 162, 163 and 164.¹

OPINION BELOW

The opinion of the United States District Court for the Southern District of Texas, Houston Division (RA 104), is reported at 128 F. Supp. 374. The report of the Interstate Commerce Commission in Docket No. MC-C-968, *Determination of Exempted Agricultural Commodities* (RA 30), is reported at 52 M.C.C. 511, and the Commission's report in Docket No. MC-C-1605, *East Texas Motor Freight Lines, Inc., v. Frozen Food Express* (RB 38), is reported at 62 M.C.C. 646.

JURISDICTION

The final judgments of the District Court (RA 114 and RB 60) were entered on February 23, 1955, and notices of appeal (RA 123 and RB 68) were filed on April 22, 1955. Probable jurisdiction was noted by this Court on October 10, 1955. — U.S. —, 75 S.Ct. 63, 64. Jurisdiction to review the judgment on direct appeal is conferred upon this Court by Sections 1253 and 2101 (b) of the Judicial Code, 28 U.S.C. § 1253 & 2101 (b).

STATUTES INVOLVED

Involved are the National Transportation Policy, 49 U.S.C. preceding § 1; Sections 203(b)(6), 205(g), 206(a), 209(a) and 222(b) of the Interstate Commerce Act, 49 U.S.C. §§ 303(b)(6), 305(g), 306(a), 309(a) & 322(b); Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009; and Sections 1336, 1398, 2284 and

¹ For convenience and clarity references to the transcript of record in cases 158 through 161 are prefixed (RA—) and in cases 162 through 164 are prefixed (RB—).

2321 to 2325, inclusive, of the Judicial Code, 28 U.S.C. §§ 1336, 1398, 2284 & 2321-2325, as set forth verbatim in Appendix A.

QUESTIONS PRESENTED

The following questions are presented by these appeals:

Nos. 158, 159, 160 & 161

Whether the United States District Court for the Southern District of Texas erred in its judgment (RA 114) rendered February 23, 1955, dismissing the complaints filed in Civil Action No. 8285, *Frozen Food Express, et al. v. United States, et al.*, for the reason set forth in the Court's opinion (RA 104) filed January 26, 1955, that the order of the Interstate Commerce Commission, dated April 13, 1951, in Docket No. MC-C-968, *Determination of Exempted Agricultural Commodities*, (RA. 30), sought by the plaintiffs to be set aside and enjoined, is not an order subject to judicial review under Section 205(g) of the Interstate Commerce Act, 49 U.S.C.A. § 305(g), Section 10 of the Administrative Procedure Act, 5 U.S.C.A. § 1009, and Sections 1336, 1398, 2284 and 2321 to 2325, inclusive, of the Judicial Code, 28 U.S.C.A. §§ 1336, 1398, 2284 & 2321-2325, although the Commission in said proceeding classified certain processed agricultural commodities as being embraced within the exemption of Section 203(b)(6) of the Interstate Commerce Act, 49 U.S.C.A. § 303(b)(6) and hence transportable by motor vehicles not subject to economic regulation by the Commission and classified other such processed agricultural commodities as being beyond the scope of the exemption of Section 203(b)(6) and thus able to be carried only in Commission-regulated motor vehicles?

Nos. 162, 163 & 164

Whether the United States District Court for the Southern District of Texas erred in its judgment (RB 60) rendered February 23, 1955, in Civil Action No. 8396; *Frozen Food Express, et al. v. United States, et al.*, insofar as it found that fresh and frozen dressed poultry were "agricultural (including horticultural) commodities (not including manufactured products thereof)" within the meaning of Section 203(b)(6) of the Interstate Commerce Act, 49 U.S.C.A. § 303(b)(6), and hence transportable by motor vehicles not subject to economic regulation by the Commission?

Whether the court erred in its judgment in failing to sustain the finding of the Interstate Commerce Commission in its report and order (RB 38) in Docket No. MC-C-1605, *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express* that fresh and frozen dressed poultry constitute "manufactured" products of agricultural commodities and hence are not embraced within the partial exemption of Section 203(b)(6)?

Whether the court erred in its judgment in setting aside, in part, the report and order of the Commission, adequately supported by findings of fact, in turn supported by substantial evidence and correct conclusions of law?

Whether the court erred in its judgment insofar as it enjoined and restrained the Commission from enforcing that part of its report and order that required respondent motor carrier to cease and desist from transporting fresh and frozen dressed poultry in interstate commerce for compensation except as authorized by the Commission?

PART A

STATEMENT OF CASE

Nos. 158, 159, 160 & 161

Section 203(b) of the Interstate Commerce Act, 49 U.S.C. §303(b), provides, in part, as follows:

Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include . . . (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation; . . . [Emphasis added.]

The task of administering and enforcing the provision of the Act is that of the Interstate Commerce Commission. Section 204(a)(6), 49 U.S.C. §304(a)(6); *McLean Trucking Co. v. U. S.*, 321 U.S. 67, 79, 64 S.Ct. 370, 377. For years the Commission determined item by item, as the question arose, what products were agricultural commodities within the terms of the exemption of section 203(b)(6).¹ and what prod-

¹ *Settle Common Carrier Application*, 46 M.C.C. 277 (eggs); *Severson Common Carrier Application*, 46 M.C.C. 6 (whole, skim and standardized milk and cream); *Newman Contract Carrier Application*, 44 M.C.C. 190 (apples); *Derr Contract Carrier Application*, 43 M.C.C. 437 (raw milk); *Dougherty Common Carrier Application*, 31 M.C.C. 793 (mushrooms); *Post Contract Carrier Application*, 13 M.C.C. 139 (potatoes); *Hubbs Common Carrier Application*, 6 M.C.C. 708 (peas); *Dimmick Common Carrier Application*, 6 M.C.C. 697 (peas); *Ramsey Contract Carrier Application*, 6 M.C.C. 647 (cream); *Phelps Common Carrier Appli-*

ucts were "manufactured" agricultural commodities and hence beyond the scope of Section 203(b)(6).²

The need for a comprehensive investigation of the meaning and scope of the partial exemption of Section 203(b)(6) having become apparent and the Secretary of Agriculture of the United States having peti-

cation, 6 M.C.C. 629 (peas); *Akes Common Carrier Application*, 6 M.C.C. 543 (peas); *Harris & Callis Contract Carrier Application*, 4 M.C.C. 169 (peanuts); *Bowen Common Carrier Application*, 3 M.C.C. 655 (fresh fruits and vegetables); *Zambroski Common Carrier Application*, 3 M.C.C. 610 (fresh fruits and vegetables); *Le Compte Common Carrier Application*, 3 M.C.C. 241 (fresh corn, tomatoes and beans); *Williams Contract Carrier Application*, 2 M.C.C. 685 (fresh fruits and vegetables); *Clemence Contract Carrier Application*, 2 M.C.C. 292 (fresh melons and sweet potatoes); *Stone Contract Carrier Application*, 2 M.C.C. 259 (fresh fruits and vegetables); *Cavallaro Common Carrier Application*, 2 M.C.C. 65 (fresh fruits and vegetables); *Janesofsky Common Carrier Application*, 1 M.C.C. 799 (grain); *Pohl Contract Carrier Application*, 1 M.C.C. 707 (milk and cream).

² *Harwood Contract Carrier Application*, 47 M.C.C. 597 (vegetable salads and washed spinach in cellophane bags); *Monark Egg Corporation Contract Carrier Application*, 44 M.C.C. 15 (shelled nuts and dressed poultry); *Newton Extension of Operations—Frozen Foods*, 43 M.C.C. 787 (frozen fruits and vegetables); *McCann Common Carrier Application*, 42 M.C.C. 61 (frozen fruits and vegetables); *McCarty Common Carrier Application*, 32 M.C.C. 615 (dressed poultry); *W. H. Tompkins Common Carrier Application*, 29 M.C.C. 359 (packing house products); *Allen Common Carrier Application*, 28 M.C.C. 26 (dressed poultry); *Lard and Vegetable Oil etc.*, 26 M.C.C. 135 (lard); *Hausman Extension—Morton, Ill.*, 20 M.C.C. 641 (meat and lard); *Battaglia Common Carrier Application*, 18 M.C.C. 167 (dressed poultry, butter and cheese); *Luckey Common Carrier Application*, 12 M.C.C. 739 (pasteurized milk); *Dugan Contract Carrier Application*, 7 M.C.C. 15 (clean rice, rice bean and rice polish); *Harris & Callis, supra* (ground peanut shells); *Pohl, supra*, (cream cheese and cottage cheese); *Jett Contract Carrier Application*, 1 M.C.C. 268 (oleomargarine).

tioned for a general investigation the Commission, by notice (RA 29) dated June 21, 1948, initiated on its own motion a proceeding, docketed as No. MC-C-968, *Determination of Exempted Agricultural Commodities*, to define the words "agricultural commodities (not including manufactured products thereof)" as they appeared in that section. After extensive hearings, covering 1,509 pages of testimony, the filing of exceptions to the examiner's proposed report and replies thereto and oral argument before the entire Commission, the Commission on April 13, 1951, issued its order (RA 101) discontinuing the proceeding.

The order expressly referred to and incorporated the concurrent report (RA 30) of the Commission containing its findings of fact and conclusions thereon. The Commission found, *inter alia*, that

... the term "agricultural commodities (not including manufactured products thereof)" as used in section 203(b)(6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties or result in combinations. [52 M.C.C. 557.]

The Commission listed 14 commodities or groups of commodities in varying states of production which it deemed to be "agricultural commodities (not including manufactured products thereof)" as used in Section 203(b)(6). The list did not include, among other products, fresh or frozen meat, fresh or frozen dressed

poultry, feathers, shelled nuts and cotton seed hulls, the Commission, unlike the examiner, having concluded with respect to these commodities that for one reason or another they were not embraced within the partial exemption of Section 203(b)(6).

In the subject proceeding before the district court a motor common carrier sought to have the Commission's report and order in the *Determination* case enjoined, annulled and set aside insofar as it declared fresh or frozen meat, fresh or frozen dressed poultry, feathers, shelled nuts, and cotton seed hulls, among other products, not to be embraced within the partial exemption of Section 203(b)(6). By its order (RA-114) of February 23, 1955, the district court dismissed the complaint. The reason for dismissing the complaint as stated in the court's opinion (RA 104), dated January 26, 1955, was that "the report and order of the Interstate Commerce Commission of April 13, 1951, is not an 'order' subject to judicial review under any of the statutes cited."

The reviewability of the report and order of the Interstate Commerce Commission in the *Determination* case was questioned by none of the parties to the proceeding before the district court. The matter was introduced *sua sponte* by the court itself. As a matter of fact, when questioned by the court and subsequently on supplemental briefs, counsel for the several litigants, including the Interstate Commerce Commission, the Department of Justice and the Secretary of Agriculture of the United States, expressed the unanimous view that the report and order in the *Determination* case was such a final "order" as could be reviewed by the court.

The seemingly anomalous position of the Interstate Commerce Commission and intervenors in its behalf of appealing from a judgment that declined jurisdiction to disturb an order of the Commission results from the implications inherent in the district court's action. It leaves unsettled the question of what processed agricultural commodities are embraced within the partial exemption of Section 203(b)(6) of the Interstate Commerce Act and what commodities are beyond its scope. The district court in its opinion suggests (RA 109) that the complainant motor carriers should transport fresh and frozen meat, fresh and frozen dressed poultry, feathers, shelled nuts, and cotton seed hulls, among other products, without having therefor an I.C.C.-issued certificate of public convenience and necessity authorizing such transportation. The court says (RA 109) that the Commission likely will seek injunctive relief to restrain the transportation. At that time the legality of the Commission's determination of the exempt status of the affected commodities could be tried.

According to Commissioner John L. Rogers there were in the United States on February 1, 1950, approximately 40,000 haulers of agricultural commodities, farm supplies and fish operating in interstate commerce as compared to 20,042 Commission-regulated carriers of property. *Eastern Motor Express v. United States*, 103 F. Supp. 694, 702. It is conceivable that the Commission would be required to bring suit against each one of the agricultural haulers, or at least against as many of them as would be necessary to establish for each agricultural commodity in the various stages of production in which it may be transported by motor

carriers in interstate commerce whether the transportation is or is not subject to Commission regulation.

The resultant confusion and delay pending the litigation of countless suits can be avoided by a review of the Commission's decision in the *Determination* case wherein the meaning of the statutory language of Section 203(b)(6) was comprehensively interpreted and a long, detailed list of agricultural commodities, processed but not to the point of being manufactured, was published. The Commission's findings, if sustained by court review, will have the force and effect of law, will command universal obedience, and will put to rest the question of the scope of the partial exemption of Section 203(b)(6).

SUMMARY OF ARGUMENT

Nos. 158, 159, 160 & 161

The report and order of the Interstate Commerce Commission in the *Determination* case (RA 30) is a final order reviewable under Section 205(g) of the Interstate Commerce Act and the other stated references. It at last defined "agricultural commodities (not including manufactured products thereof)" and removed the partial exemption from certain agricultural products which had been "manufactured" within the meaning of Section 203(b)(6) of the Act. Its effect was to subject such carriers as did not comply with its findings and conclusions to the penalties prescribed by Section 204(c), and 222(a) and 222(b) of the Act. The appellants have a pecuniary interest in the order and are affected substantially by its provisions. Under this Court's decisions in the *El Dorado* and *Powell* cases, *infra*, as well as the *Noeding* decision, *infra*, it should have been reviewed by the district court.

The question presented by this appeal is important to the maintenance of a stable national transportation system by motor vehicles, efficient and adequate to meet the needs of commerce, the postal service and the national defense. National Transportation Policy, 49 U.S.C. preceding §1.

The decision of the district court has rendered the Commission's report and order in the *Determination* case impotent. Stripped of the vitality that court review of the decision would have imparted, the report and order stands barren, without purpose or meaning.

If sustained the district court's decision would require the status of each agricultural commodity as falling within or beyond the scope of the partial exemption of Section 203(b)(6) to be litigated before the courts, including this Court. Uncertainty would pervade this important segment of the transportation industry so long as law suits could be brought.

ARGUMENT

Nos. 158, 159, 160 & 161

POINT I

THE ACTION OF THE INTERSTATE COMMERCE COMMISSION IN DISPOSING OF THE ISSUES PRESENTED IN THE DETERMINATION CASE RESULTED IN AN ORDER SUBJECT TO JUDICIAL REVIEW.

The mere reading of the reasoning of the district court leading to the dismissal of the complaint discloses the error of law that was committed by the court. In support of its conclusion that the report and order of the Commission in the *Determination* case was not an "order" subject to judicial review the court said:

The proceeding before the Commission was not an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles R.R. Co.* (273 U.S. 284), holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unanimous Court there, aptly describes the order in issue here:

"The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected by the Commission, through its employees. It is the exercise solely of the function of investigation."

The situation presented by this appeal clearly is distinguished from that of the *Los Angeles* case. The Commission's report and order in the *Determination* case has been binding upon the motor-carrier industry. Following the decision many motor carriers undertook to transport commodities formerly considered as subject to regulation under the Interstate Commerce

Act. *Increases, Pacific Northwest*, 54 M.C.C. 125, 127. Conversely, many motor carriers that previously had engaged in the transportation of products found to be manufactured agricultural commodities in the *Determination* case either ceased transporting such products or filed applications with the Commission for certificates or permits authorizing such transportation. See *Cosgrove and Demers Extension—Central States*, 53 M.C.C. 365.

Motor carriers who have continued to transport, without authority, products that the Commission found in its report and order in the *Determination* case to be manufactured agricultural commodities have violated Section 206 and Section 209 of the Act, respectively, 49 U.S.C. §§306 and 309. They have been ordered by the Commission, pursuant to Section 204(c) of the Act, 49 U.S.C. §304(c), to cease and desist from continuing such unlawful transportation. *Dart Transit Co.—Investigation of Operations*, 54 M.C.C. 429, sustained, *Dart Transit Co. v. Interstate Commerce Commission*, 110 F. Supp. 876, affirmed, *per curiam*, 345 U.S. 980, 73 S.Ct. 1138; *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 62 M.C.C. 648, sustained in part, *Frozen Food Express v. United States*, 128 F. Supp. 374. They have been sued by the Commission for injunctions to restrain their further violations of the Act, Section 222(b), 49 U.S.C. §322(b), *I.C.C. v. Allen E. Kroblin, Inc.*, 113 F. Supp. 599, affirmed 212 F. (2d) 555; *I.C.C. v. Wagner*, 112 F. Supp. 109; *I.C.C. v. Yearly Transfer Co.*, 104 F. Supp. 245, affirmed 202 F. (2d) 151, and they have been criminally prosecuted and convicted under Section 222(a) of the Act, 49 U.S.C. §322(a). *Southwestern Trading Co. v. U. S.*, 208 F. (2d) 708.

Furthermore, in passing upon applications for motor common carrier authority filed pursuant to Section 207 of the Act, 49 U.S.C. §307, or applications for motor contract carrier authority filed pursuant to Section 209, 49 U.S.C. §309, the Commission has given effect to its report and order in the *Determination* case, *Direct Transit Lines, Inc., Extension*, 62 M.C.C. 231; *Valleskey Common Carrier Application*, 62 M.C.C. 228, *Watkins Motor Lines, Inc. Ext.—Poultry*, 64 M.C.C. 167.

The report and order in the *Determination* case was more than a mere "press release." The findings embodied therein "must be taken by those entitled to rely upon them as to what they purport to be—an exercise of the delegated legislative power—which, until amended, are controlling alike upon the Commission and all others whose rights may be affected by the Commission's execution of them." *Columbia Broadcasting System v. United States*, 316 U.S. 407, 422, 62 S.Ct. 1194, 1202. That they were embodied in an investigatory proceeding rather than a rule-making one is immaterial. "The particular label placed upon it by the Commission is not necessarily conclusive, for it is the substance of what the Commission has purported to do and has done which is decisive" *Columbia Broadcasting System v. United States, supra*, at 316 U.S. 416, 62 S.Ct. 1200.

Nor is the effect of the Commission's order diminished by the fact that it was addressed to no specified carrier. It would be unrealistic to contend that because the Commission ordered no particular motor carrier to change its course of conduct, relief against what the Commission actually did is unavailable. This Court long has granted relief to parties claiming injury from

an alleged unlawful public action, although such action made no direct demands upon them. *Joint Anti-Facist Refugee Committee v. McGrath*, 341 U.S. 123, 141, 71 S.Ct. 624, 633.

Section 205(g) of the Interstate Commerce Act assures any party in interest of the same right of relief from "an final order" under Part II of the Act, pertaining to motor carriers, as had been available under Part I, dealing with railroads and pipelines. The relief that had been available was for an interested party to maintain under Sections 1336 and 2323 of the Judicial Code, which were taken from the Urgent deficiency Appropriations Act of October 22, 1913, 38 Stat. 219 a civil action to "enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission". The right of judicial review thus conferred was strengthened by the enactment in 1946 of the Administrative Procedure Act, Section 10 of which provides, "Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."

Directly in point are two decisions of the Supreme Court of the United States and a decision of the United States District Court for the District of New Jersey in which judicial review under the cited statutes or preceding legislation was had of orders of the Interstate Commerce Commission that suffered all or some of the technical deficiencies that the district court found in the subject proceeding to be fatal.

The Commission's report and order in *Allowances for Privately Owned Tank Cars*, 258 I.C.C. 371, was

not rendered in an adversary proceeding. The order which initiated the proceeding purported to do no more than direct that an investigation be made into the lawfulness of certain practices. When the final report and order was forthcoming some four years later, the only "order" was one discontinuing the proceeding and removing it from the Commission's docket.

Nevertheless the Supreme Court of the United States in *El Dorado Oil Works v. U. S.*, 328 U.S. 12, reversed the judgment of the district court dismissing the action for want of jurisdiction on the ground that the Commission's action did not amount to a reviewable "order." This Court said, at 328 U.S. 18:

... the Commission's findings and determination if upheld constitute far more than an "abstract declaration." "Legal consequences" would follow which would finally fix a "right or obligation" on appellants' part. These findings are more than a mere "stage in an incomplete process of administrative adjudication", for the Commission has discontinued further proceedings ... The district court erred in dismissing the complaint for want of jurisdiction.

Similarly in *Powell v. United States*, 300 U.S. 276, 284, 57 S.Ct. 470, 475, the contention was made that the antecedent Commission order in *Pollard, Receiver, v. Fort Benning R. Co.*, 206 I.C.C. 362, striking a certain tariff from the Commission's files, was not reviewable under the statute because it "is not directed to any party; it requires no one to do or to refrain from doing any act; it could not be enforced, obeyed or disobeyed; it did not speak to the future or contemplate any future effect because, on and after the date it was made, it had no significance except as a record of a certain completed act performed by the Commission."

The Supreme Court rejected the contention, saying at 300 U.S. 285, 57th S.Ct. 475:

... overemphasis upon the mere form of the order may not be permitted to obscure its purpose and effect... Interpreted according to its purpose, the order is in substance and effect an affirmative one and therefore reviewable under the statute... It is clear that the District Court of three judges had jurisdiction to entertain the Seaboard's suit."

Finally the proceeding in the subject case and in Commission Docket No. MC-C-2, *New York, N. Y., Commercial Zone*, 1 M.C.C. 665, are startlingly similar from the standpoint of the judicial reviewability of the Commission's final order. Both were instituted as investigations by the Commission into the scope of the partial exemption of Section 203(b) of the Interstate Commerce Act—pertaining to agricultural commodities within the meaning of subparagraph (6) in the former and to the New York Commercial Zone within the meaning of subparagraph (8) in the latter. Neither proceeding was an adversary one. In both cases notice was given only to the public; no carrier or carriers were named as respondents in the proceedings. In neither case was a carrier ordered to do or refrain from doing anything. In the light of these similarities the following discussion in *Charles Noeding Trucking Co. v. United States*, 29 F. Supp. 537, 543, reviewing the Commission's order in the latter case is particularly pertinent.

... if the determination of exemption within the meaning of Section 203(b)(8) is purely an administrative function of the Commission this court is without jurisdiction of the pending cause. It would follow therefore, if this be correct, that

if the plaintiffs should refuse to comply with the regulations imposed by the Motor Carrier Act while operating in the territory covered by the Commission's order the Commission would then be required to make a further order upon the plaintiffs to require them to comply with the regulatory provisions of the Act. Section 222(a) of the Act, 49 U.S.C.A. §322(a), however, provides that a penalty may be imposed upon any motor carrier which shall knowingly and wilfully violate any provision of the Act or any rule, regulation or order promulgated thereunder.

The plaintiffs take the position that they are not required to incur penalties in order to test the validity of the exempt zone created by the Commission's order. They urge that the right to institute the pending suit is conferred upon them by the provisions of Section 205(h) of the Motor Carrier Act, 49 U.S.C.A. §305(h). This provides that "Any final order made under this chapter shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under chapter 1 of this title." The right given to an interested party to review the orders of the Commission conferred by Section 208 of the Judicial Code, (28 U.S.C.A. §46) is therefore carried over into the Motor Carrier Act. The word "final" however is used to qualify the phrase "Any * * * order" occurring in Section 205(h). We therefore must first determine whether or not the order here made by the Commission is in its nature a final order. If it is such it follows, we think, that it was made in a "proceeding" within the meaning of Section 205(f) of the Motor Carrier Act.

We conclude that the order sub-judice is a final order for since it at last defines the exempt zones and purports to remove the qualified exemption from certain municipalities which are in fact contiguous within the meaning of Section 203(b)(8).

(for example Perth Amboy, Carteret, Linden and Elizabeth are physically contiguous to Richmond save only for the interposition of the Arthur Kill), its effect is to subject such carriers as do not comply with the regulations imposed by the Act to the penalties prescribed by the Act. The Commission's order therefore withdraws from the plaintiffs that partial immunity from regulation which they acquired by reason of the provisions of Section 203 (b) (8). As was stated by the Supreme Court in the case of *Powell v. United States*, 300 U.S. 276, 285, 57 S.Ct. 470, 475, 81 L.Ed. 643, " * * * over-emphasis upon the mere form of the order may not be permitted to obscure its purpose and effect." It cannot be denied that the plaintiffs have a pecuniary interest in the order and are affected substantially by its provisions. We deem a final order to be one which ends the action or proceeding before the tribunal which makes it, leaving nothing further to be determined by that tribunal or required to be accomplished other than the administrative execution of the decision. A correct analogy to this phase of the case at bar is supplied by those cases which deal with the rate making powers of the Commission for other interstate carriers. See *United States v. Los Angeles & S.L.R. Co.*, 273 U.S. 299, 309, 47 C.Ct. 413, 71 L. Ed. 651; *Procter & Gamble Co. v. United States*, 255 U.S. 282, 293, 32, S.Ct. 761, 56 L. Ed. 1091; *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499, 55 S.Ct. 462; 79 L. Ed. 4023.

In the case of *Rochester Telephone Corporation v. United States*, 59 S.Ct. 754, 758, 83 L. Ed. 1147, decided April 17, 1939, the Supreme Court, by Mr. Justice Frankfurter stated: " * * * where the Commission's order denies an exemption from the terms of the statute, as in the Intermountain Rate cases, 234 U.S. 476, 34 S.Ct. 986, 58 L.Ed. 1408, the road to the courts' jurisdiction seems to be clear. There is a constitutional 'case' or 'contro-

versy,' *Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047; the requirements of equity are satisfied if disregard of the Commission's adverse action entails threat of oppressive penalties; and the suit is within the express language of the Urgent Deficiencies Act, in that it is one 'to enjoin, set aside, annul' an 'order of said commission.' 28 U.S.C. Secs. 46, 47, 28 U.S.C.A. §§46, 47. While the penalties may be imposed by the statute for its violation and not for disobedience of the Commission's order, a favorable order would render the prohibitions of the statute inoperative." Nor is the jurisdiction conferred by the Urgent Deficiencies Act limited to suits by carriers to avoid statutory penalties. Such suits may be maintained by other parties in interest. See *Claiborne-Annapolis Ferry Co. v. United States*, 285 U.S. 382 [52 S.Ct. 440, 76 L.Ed. 808]; *Mississippi Valley Barge L. Co. v. United States*, 292 U.S. 282, 293 [54 S. Ct. 692, 78 L.Ed. 1260].

It is apparent, therefore, that the district court erred in declining to review the Commission's order in the *Determination* case. This court's decisions in the *El Dorado* and *Powell* cases, supra, as well as the *Noeding* decision, supra, furnish ample and reliable precedent sustaining the judicial review of such an order of the Interstate Commerce Commission.

POINT II

THE DECISION OF THE DISTRICT COURT CONFLICTS WITH THE DISPOSITION OF THE SAME ISSUE BY ANOTHER U. S. DISTRICT COURT.

The decision of the district court in the subject proceeding that the order of the Interstate Commerce Commission is not judicially reviewable presents a conflict with the decision of the United States District Court for the Southern District of Florida, in *Florida*

Gladiolus Growers Ass'n. v. United States, 106 F. Supp. 525. Sitting as a three-judge statutory court, the court reviewed the Commission's order in the *Determination* case and restrained the Commission from enforcing that portion of it which declared horticultural commodities not to be agricultural commodities within the scope of Section 203(b)(6).

An examination of the briefs indicates, as in the instant case, that no jurisdictional objection was raised by any of the parties. This circumstance, no doubt, detracts from the weight of this case as an authority on the procedural issue. On the other hand, the question whether an action presents a justiciable controversy is one that the courts may raise *sua sponte* in order that the judicial process may not be abused. *Rochester Telephone Corporation v. United States*, 307 U.S. 125, 128, 59 S.Ct. 754, 756. Consequently the assumption of jurisdiction in the *Florida Gladiolus* case may be construed as constituting at least some indication that an action may be maintained under circumstances similar to those in the case at bar. It is possible, indeed, that the point did not occur to the court, since the matter was not brought to its attention by counsel. In any event, tacit or negative though it be, it is the latest expression of that court on this point. *Union Producing Company v. Federal Power Commission*, 127 F. Supp. 88, 93.

The confusion that results from these conflicting positions should be dispelled by the reversal of the judgment of the district court in the subject proceeding and the remanding of the matter to the district court for disposition on the merits.

PART B**STATEMENT OF CASE****Nos. 162, 163 & 164**

On December 23, 1953, East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., appellants herein, pursuant to the provisions of Section 204(c) of the Interstate Commerce Act, 49 U.S.C. 304(c), filed with the Interstate Commerce Commission their complaint alleging that Frozen Food Express, appellee herein, was engaged in the for-hire interstate transportation of fresh and frozen meats, meat products, and dressed poultry, to, from, and between points in the United States not authorized in its certificates of public convenience and necessity. The Commission was requested to issue an order requiring Frozen Food Express to cease and desist from the allegedly unlawful operations. On February 25, 1954, all parties to the complaint proceeding before the Commission submitted a stipulation of facts, accompanied by certain documentary evidence in exhibit form (RB 71). The stipulated facts and exhibits constituted the record both before the Commission and the District Court.

The ultimate issue before the Commission was whether the operations complained of came within the exemption provisions of section 203(b)(6) and could, as a result, be performed lawfully in the absence of a certificate of public convenience and necessity or permit from the Commission. By report, dated July 13, 1954 (RB 38, 45), the Commission found and concluded:

“(1) that the exemption of vehicles used in carrying ‘ordinary livestock’ does not extend to fresh or frozen meats, the products of the slaugh-

ter of such livestock; (2) that the exemption of vehicles used in carrying 'agricultural (including horticultural) commodities (not including the manufactured products hereof)' does not embrace vehicles used in carrying ordinary livestock in view of the specific exemptions in the same section of vehicles used in carrying that commodity; and (3) that the exemption of vehicles used in carrying 'agricultural (including horticultural) commodities (not including manufactured products thereof)' does not in any event extend to vehicles used in carrying either fresh or frozen meat or fresh or frozen dressed poultry."

In accordance with its findings and conclusions, the Commission entered an order (RB 47) requiring the defendant, Frozen Food Express, to cease and desist from all motor carrier operations in interstate and foreign commerce found in the report of the Commission to be unlawful.

On August 2, 1954, appellee, Frozen Food Express, instituted an action in the court below in which it sought to have set aside and annulled in its entirety the order of the Commission (RB 1). In that suit no attack was made on the Commission's action with respect to the adequacy of the Commission's findings nor the sufficiency or substantiality of the evidence. The sole contention was that the Commission erred as a matter of law in its construction and application of the provisions of 203(b)(6). At the trial below, the Interstate Commerce Commission, together with appellants herein and other intervening defendants including certain railroads, defended the Commission's order; however, the statutory defendant, the Attorney General of the United States, refused to defend the action of the Commission and joined the intervening plaintiff, the Secretary of Agriculture, in

the latter's contention that the provisions of the statute in question should have been construed by the Commission so as to exempt from the certificate requirements of the Act motor vehicles engaged in the transportation of fresh and frozen meat and fresh and frozen poultry.

The lower court agreed with the Interstate Commerce Commission in the latter's holding that motor vehicles engaged in interstate for-hire transportation of fresh and frozen meat and meat products were not within the exemptive language, but on the strength of *I. C. C. v. Allen E. Kroblin, Inc.*, 133 F. Supp. 599, affirmed 212 F. 2d 555, refused to accept the Commission's determination with respect to fresh and frozen dressed poultry and accordingly set aside that part of the Commission's order restraining the plaintiff from transporting dressed poultry in the absence of authority from the Commission.

SUMMARY OF ARGUMENT

Nos. 162, 163 & 164

As seen from the foregoing statement the question presented, stripped of collateral issues and reduced to its briefest expression, is whether dressed poultry (fresh or frozen) is an *agricultural commodity* and not a *manufactured product thereof* as those terms are used in section 203(b)(6) of the Act. These appellants contend that poultry of the type described is a manufactured product and no longer an agricultural commodity and accordingly not embraced within the exemptive language of the statute.

Appellants, like all others that have encountered the question, concede that the statutory language involved is difficult to apply not only because the lan-

language employed by Congress is ambiguous but also because its legislative history, the conventional extrinsic aid to statutory construction, leaves much to be desired with respect to determining the intent of Congress particularly on some commodities, including processed poultry. Notwithstanding its limitations, appellants contend that the legislative history of the section in question when viewed in the light of the purpose sought to be achieved by Congress in enacting the entire statute supports the construction which they urge.

Additionally, and more importantly, these appellants in support of the interpretation of the statutory terms which they urge rely on four basic propositions.

First, appellants contend that since meat packing—the processing of fresh and frozen meat—and poultry killing, dressing, and packing—the processing of fresh and frozen dressed poultry—were classified and considered by governmental agencies and by trade and industry—and necessarily therefore by Congress—as manufacturing processes, and the products thereof manufactured, Congress did not intend to include such commodities within the partial exemption of Section 203(b)(6). *Second*, appellants contend that there has been a continuous, uniform, and settled interpretation and administration of the provisions in question and that such administration and interpretation has been universally and consistently accepted by those members of the public most directly concerned. *Third*, appellants contend that as a matter of fact, based on industry practices and methods, the processing required to prepare for market fresh and frozen meat and fresh and frozen dressed poultry are processes of manufacture as that term is used in the statute and

as it has been defined by the Commission in the *Determination Case* and by Congress in the Renegotiation Acts. ¹ *Fourth*, it is contended that the Commission's action in the proceeding below is based on an interpretation of the exemptive language completely consistent with (a) the National Transportation Policy, the general purposes of Part II of the Interstate Commerce Act; and (b) is supported by adequate findings which in turn are based on substantial evidence. Appellants also contend that the *Kroblin case*, *infra*, was erroneously decided and accordingly should be rejected by this court.

¹ The Commission's definition or description of the term "agricultural commodities" is substantially in accord with the definition of that term used by Congress itself in the Renegotiation Acts of 1942, 1948, and 1951, as amended. Title 50, U. S. Code Annotated (Appendix Section 1191 (i)-(1)(c).) The exemption provisions of the Renegotiation Acts excluded from the application of its provisions contracts involving the acquisition of agricultural commodities. The Renegotiation Act, however, unlike the Motor Carrier Act, defines with particularity the term "agricultural commodities." The language of the exemption is as follows:

"1216. Exemptions—(a) Mandatory exemptions

The provisions of this title (sections 1211-1223 of this Appendix) shall not apply to—

(1) any contract by a Department with any Territory, possession, or State, or any agency or political subdivision thereof, or with any foreign government or any agency thereof; or

(2) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term "agricultural commodity" as used herein shall include but shall not be limited to—

(A) commodities resulting from the cultivation of the soil

ARGUMENT

Nos. 162, 163 & 164

POINT I

THE LEGISLATIVE HISTORY OF SECTION 203(b)(6) INDICATES THAT THE CONGRESS INTENDED TO INCLUDE WITHIN THE CERTIFICATE PROVISIONS AND ECONOMIC REGULATORY PROVISIONS OF PART II OF THE INTERSTATE COMMERCE ACT SUCH COMMODITIES AS FRESH AND FROZEN POULTRY.

Congress in 1935 enacted legislation to regulate the transportation of property and passengers in interstate commerce by motor vehicle. This after earlier legislatures had considered proposed legislation but failed to act apparently because of the complexity of the scheme of regulation proposed. The statute as enacted was the subject of extended legislative hearings and debates. In Appendix B to this brief, the legislative history relating to those terms of the statute here in question is set forth, together with a brief summary of amendments or amendment attempts made subsequent to the enactment of the statute.

such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugarcane, and sugar beets;

(B) natural resins, saps, and gums of trees;

(C) animals, such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream; . . . "

As seen, the language employed by the Congress in describing and defining the limits of the exemption in the Renegotiation Acts spells out in detail the legislative intent. Sub-section (2), for example, specifies that the exemption extends to contracts for agricultural commodities in their "raw or natural state" except where the commodity is one not customarily sold in its raw or natural state—the latter class of commodities are exempt only to the "first form or state" beyond the raw or natural state in which it is customarily sold.

If one thing, more than any other, stands out with respect to the intent of Congress in enacting the partial exemption of Section 203(b)(6), as well as the exemptions of Section 203(b) (4a) and Section 203(b)(9), it is that the farmer was to be relieved of most of the burdens of motor carrier regulation. Throughout the hearings before the Senate and House committees and the debates on the floors of both houses of Congress the talk was of aiding the farmer, exempting from impending regulations his truck engaged in the occasional or reciprocal transportation for hire of his neighbor's goods, the truck of his cooperative, and the truck taking the fruits of his labors to market. To broaden the scope of the partial exemption of Section 203(b)(6) so as to allow commercial fleets of refrigerated trucks to travel thousands of miles in the for-hire carriage of manufactured agricultural commodities such as fresh and frozen dressed poultry, free from virtually any economic control would be to do violence to that Congressional intent.

The record evidence establishes (RB 85, 86) that generally the processing, marketing and interstate transportation of fresh and frozen poultry is done by, or for the account of, large meat packing companies. Therefore, whatever benefits are to be derived from the exempt motor carrier movement of poultry would accrue not to the farmer as so clearly intended by Congress but rather to those in a non-agricultural or industrial pursuit.

POINT II.

THE CLASSIFICATION OF THE INVOLVED FOOD PRODUCTS BY THE EXECUTIVE DEPARTMENTS AND OTHER FEDERAL AGENCIES AS "MANUFACTURED" ARTICLES REQUIRES THAT THEY BE SO CONSIDERED UNDER SECTION 203(b)(6) OF THE INTERSTATE COMMERCE ACT.

Since prior to 1935 the meat packing industry and the poultry killing or processing industry have been classified as manufacturing industries; and meats, meat products, and dressed poultry have been classified as manufactured foods in all of the numerous classifications issued by the executive departments and agencies of the government pursuant to acts of Congress. Knowledge of these consistent regulatory interpretations, policies and practices necessarily must be imputed to Congress.

Exhibits 5 through 19 (RB 88-146) show that over a long period of time beginning well before the enactment of Part II of the Interstate Commerce Act in 1935 and continuing without interruption to this date various Executive departments and agencies of the U. S. Government including the Department of La-

¹In the litigation below, both before the Commission and the District Court, plaintiffs contended that both products of poultry slaughter and products of livestock slaughter were embraced in the exemptive language of the statute. Although the three judge District Court held (one judge dissenting) that products of livestock slaughter were not within the terms of the statute and, although no appeal from that part of the District Court's decision is pending in this Court, appellants believe it desirable to include argument with respect to both poultry and meat. This for the reasons that the record before the Commission contains evidence relating to both commodities and both the Department of Agriculture and the Department of Justice urged the District Court to hold that products of livestock slaughter are within the terms of the exemption.

bor (Bureau of Labor Statistics) (U. S. Unemployment Service), the National Recovery Administration, the Department of Commerce, (Bureau of Foreign and Domestic Commerce) (Bureau of Census), the Executive Office of the President (Bureau of the Budget), the War Production Board, the Department of the Treasury (Procurement Division), the Social Security Board (Bureau of Research and Statistics), pursuant to direction by Congress or under the authority of Congress, established systematic and standardized classifications of commodities by economic groups and grouped in classification codes the various industries. An examination of the exhibits reveals that the classifications, whether by commodity or industry, in each case reflect the fact that throughout the classifications the same general terminology has been used and that *dead, edible animals and birds and products thereof have been classified as manufactured agricultural articles*; that the Executive departments' classifications establish that *dressed poultry is a meat product* and therefore a "manufactured" article. Meats and meat products generally throughout the various Executive departments' classifications are termed *manufactured foodstuffs* and that meat packers are classified as *manufacturers*. Poultry, dead, dressed, or undressed, fresh and frozen, prepared or preserved, has been consistently considered as a *manufactured product*.

Exhibits 5 through 19, (RB 88-146) from which the stipulations of fact numbered 16 through 30 (RB 74-81) have been drawn, indicate clearly that the terminology employed throughout has been used consistently and without material change since before 1935. Moreover, the terminology used represents the gen-

erally accepted and prevailing principle that the dead, edible products of farm animals and birds are *manufactured agricultural products*.

Exhibits 5, 6, 7, 8, and 9, (RB 88, 92, 95, 97, 101) as may be seen from the title pages thereof, are all governmental publications not only available to members of Congress but also available to the technical staffs of Congressional committees preparing legislation. Intervenors consider the information contained in the last-named exhibits with respect to the classification of the questioned food products of such importance in determining Congressional intent that it here merits brief restatement.

In the Bureau of Labor Statistics publication entitled "Wholesale Prices of Commodities", January 1929 (Exhibit No. 5, (RB 88)) the Department of Labor classified cattle, hogs, sheep, and poultry in the live state as "farm products." Fresh meats, however, including beef, lamb, mutton, pork, veal, and "*poultry, dressed*" were included under the classification "foods." (RB 91)

In a publication entitled "Code for Industrial Classification," issued in 1933 by the Bureau of Economic Research and Planning, National Recovery Administration (Exhibit No. 6 (RB 92)), there is set forth a systematic classification by commodities of business and industry. Division A of that classification groups agriculture, forestry, and animal husbandry together. Sub-classifications under agriculture include stock farming—cattle, hogs, horses, sheep, etc., bee culture (apiaries) and poultry. Classified under Division II, which groups manufacturing industries, meat packing is defined as follows:

"This classification covers establishments engaged in both slaughtering cattle, hogs, sheep, or other animals and preserving all or a part of the raw stock by canning, salting, smoking, or otherwise curing it for the trade; establishments which purchase raw stock from slaughter houses and preserve it (includes lard)."

A more specific grouping under Division II, Section I, entitled "Food and Kindred Products," includes a classification entitled "all other food products," which in turn includes "poultry killing, dressing, and packing, wholesale." "Peanuts, walnuts and other nuts, processed or shelled" are also included in this classification.

Schedule A—"Statistical Classification of Imports into the U. S.", a systematic classification of commodities used in administering the tariff laws, published in the year 1932 by the Department of Commerce (Exhibit 7, RB 95) contains a major grouping entitled "animal and animal products, edible." Subgrouped thereunder are two classifications entitled "(A) animals, edible, except for breeding; and (B) meat products." Under the first of those classifications is included *poultry in the live state*. Included under the second classification "Meat Products" was the sub-classification "Birds, including *poultry—dead, dressed, or undressed*." Included also under the second classification is "Fresh, chilled, or frozen beef, veal, pork, lamb, goat meat, reindeer meat and venison."

In a publication entitled "Industry Classifications for the Census of Manufacturers, 1933," issued by the Bureau of the Census, Department of Commerce, in 1934 (Exhibit 8 RB 97) there is contained a sta-

tistical classification of industries. "Meat Packing, Wholesale" and "Poultry Killing, Dressing, and Packing, Wholesale" are included within "Industry Group 1—Food and Kindred products" as *manufacturing industries*.

The Bureau of the Census, U. S. Department of Commerce, in its publication "Foreign Commerce and Navigation of the United States," published in 1934 (Exhibit 9-RB 101) classified live meat animals under the generic description "Animals, edible." Beef, veal, pork, mutton, lamb, and other fresh meats, dead turkeys and other dead poultry, and prepared poultry, however, were included within the classification "Meats." Under table 15, which groups articles in accordance with their degree of manufacture, those coming within the term "Meats" are classified as dutiable under "Class C—Manufactured Foodstuffs."

The classifications of commodities and industries as made by the Executive departments at the time that the Motor Carrier Act was under consideration by the Congress, particularly since such classifications were made under Congressional mandate, is the most convincing evidence of Congressional intent with respect to the question of what commodities were intended to be included within the provisions of Section 203(b)(6). That such classification data should be used by the Court as a persuasive guide in this proceeding is beyond question for in the *Determination Case* even the Secretary of Agriculture on brief urged the Commission to consider the Standard Industrial Classification Manual (published subsequent to the enactment of Part II of the Act) in resolving the issues then before the Commission.

Since the described classifications constitute a clear, uniform construction employed by all governmental

agencies in carrying out Congressional mandates involving practically all phases of governmental regulations of business, it is a logical and necessary conclusion that Congress adopted the same meaning for the words "manufactured products" in Section 203 (b) (6) of the Motor Carrier Act.

POINT III

MEATS, FRESH AND FROZEN, AND OTHER PRODUCTS OF SLAUGHTER; AND POULTRY, FRESH AND FROZEN, HAVE BEEN CONSISTENTLY HELD TO BE SUBJECT TO THE CERTIFICATE PROVISIONS OF PART II OF THE ACT AND THE COMMISSION'S INTERPRETATION HAS HAD UNIVERSAL AND CONSISTENT ACCEPTANCE BY THOSE MEMBERS OF THE PUBLIC MOST DIRECTLY CONCERNED.

The reports of the Interstate Commerce Commission fail to disclose any case in which it was contended that products of animal slaughter should be classified as unmanufactured agricultural commodities. To the contrary, reports of the Commission indicate quite conclusively that since the beginning of Federal regulation of motor transport, products of slaughter have been considered manufactured, and consequently not within the purview of the partial exemption of Section 203 (b) (6) of the Act. In the *Determination Case*, the Interstate Commerce Commission did give brief consideration to the question of whether or not products of slaughter were so-called exempt commodities and expressly held that "fresh meat and meat products" did not fall within the description "agricultural commodities." The Commission's decision in that case also excluded pelts, skins, and green and salted hides from the exempt category. Generally, however, the Commission did include as exempt commodities under Section 203 (b) (6) all products of *live* animals such as wool and mohair, milk, eggs (in the shell), and honey. From the report of the Commission it

appears that none of the numerous parties in the *Determination Case*, including the Secretary of Agriculture, even suggested that meat in the form of fresh or frozen beef, fresh or frozen pork, or fresh or frozen lamb should be considered as commodities within the exemption provisions of Section 203(b)(6). The fact that no representations with respect to meats and meat products were made is evidence of the acceptance by those affected by the Commission's uniform holdings that fresh and frozen meats, as well as other meat products, were not within the term "agricultural commodities." It is appropriate to note here that in the *Determination Case*, the Department of Agriculture, although urging that the meat of poultry be classified in the exempt category, did not contend that any products of slaughter (save hides) should be considered as unmanufactured agricultural commodities. It was contended that the washing, grading, drying, storing, salting and packaging of animal hides did not make that commodity a manufactured product and that hides therefore should be considered as and classified by the Commission as an exempt commodity. But, as hereinbefore stated, the Commission rejected the Department of Agriculture's position on animal hides and held both green and salted hides not to be within the meaning of "agricultural commodities" as that term is used in the Act. The Commission's holding with respect to the classification of hides has been followed by the United States Court of Appeals for the Fifth Circuit in *Southwestern Trading Company v. U. S.*, 208 F. 2d 708. Judge Holmes speaking for the Court stated:

"In a proceeding before the Interstate Commerce Commission, reported in 52 Motor Carrier Cases 511, the history of the legislation was re-

viewed, and it was found that the primary purpose of the partial exemption provided in said Section 303 (b) (6) was to aid the farmer in agricultural pursuits; that the words agricultural commodities, should be construed in their plain, usual, and commonly accepted sense. The Commission proceeded to group agricultural commodities under three general headings: those which are produced by plants; those which are produced continually by living animals kept on the farm, such as milk, eggs, and wool; and live poultry. The only group into which cow hides could possibly come would be the products of animals, but it is apparent that cow hides would not be included within this group, as said classification refers only to the commodities which living animals produce continually and with regularity. The hide is a part of the animal; separable only upon its death; it is a product of slaughter only. The Commission specifically found that slaughtered animals were not embraced in the definition of ordinary livestock, and that the products thereof, such as fresh meat and meat products, did not fall within the description 'agricultural commodities' as used in Section 303(b) (6). It stated that pelts, skins, or green and salted hides, are not agricultural commodities within the meaning of said section. The conclusion reached by the Commission is directly in point here.

"Where there is a definitely settled administrative construction for which there is a rational basis, the courts may adopt the same, especially where there is an absence of authority to the contrary." (Citations omitted)

The Interstate Commerce Commission, during the entire course of its administration of Part II of the Interstate Commerce Act, has held that dressed poultry is not an exempt agricultural commodity. In *Frank*

Battaglia Common Carrier Application, 18 M.C.C. 167 (May 1939), the Commission adopted the findings and conclusions recommended by a joint board which denied the grant of the application because of applicant's failure to prove need for the proposed operation, but concluded that butter, cheese, and dressed poultry were manufactured commodities for which authority was required. Subsequent to the *Battaglia Case*, the Commission, in *Monarch Egg Corporation Contract Carrier Application*, 26 M.C.C. 615 (November 1940), held that the transportation of dressed poultry was subject to the certificate requirements of Part II of the Act. The Commission reached similar conclusions in *Ollin W. Allen Common Carrier Application*, 28 M.C.C. 26 (February 1941) and *R. C. McCarthy Contract Carrier Application*, 32 M.C.C. 615 (March 1942).

The *Monarch Egg Case*, *supra*, was reopened by the Commission at the request of the Department of Agriculture and after further hearing the Commission sustained its prior conclusions and again held that dressed poultry could not be considered an unmanufactured agricultural commodity. *Monarch Egg Corp. Contract Carrier Application*, 44 M.C.C. 15 (October 1944). In support of its conclusions the Commission stated at page 19:

We found in the prior report that the term "ordinary livestock" embraced poultry as well as cattle, horses, sheep, etc., but that dressed poultry, picked but not drawn, "does not come within the term livestock." In view of the definition of ordinary livestock set forth in Section 20 (11), which the legislative history above-discussed indicates should be applied also to the term as used in Section 203 (b) (6), it is apparent that poultry in any condition is not "ordinary livestock". However, they are raised on the farm, and clearly are in-

cluded within the broader description "agricultural commodities." It therefore becomes necessary to determine whether poultry which have been killed and picked but not drawn are unmanufactured agricultural commodities within the meaning of the present exemption.

As in the case of shelled pecans and walnuts, there is a complete absence of any showing of the customs and practices obtaining in the marketing of poultry, but certain facts in this connection are so well known that we may take cognizance of them for the purpose of the present determination. It is *common knowledge that, generally, farmers do not kill and pick poultry in marketing it. Probably without exception, or at most with rare exceptions, the commercial killing and dressing of poultry is done by meat-packing companies or by special poultry packers. Its subsequent transportation is under refrigeration. As such, it can no longer be considered an unmanufactured agricultural commodity.* (Emphasis added)

The next reported decision by the Commission was issued in *Determination of Exempt Agricultural Commodities, supra*, where it was held by the Commission, at page 557, as follows:

"... we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits and nuts); forest products; *live poultry* and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment have been so changed as to possess new forms, qualities, or properties, or result in combinations.

"We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in Section 203 (b) (6) includes (9) *live poultry*, namely, chickens, turkeys, ducks, gees, and guineas; . . ." (Emphasis added)

The foregoing cases represent all of those in which the Interstate Commerce Commission, in reported decisions, gave specific consideration to dressed poultry. However, the Commission's interpretation and application of the provisions of Section 203(b) (6) was continuous and consistent in a countless number of motor carrier application proceedings not reported in the permanent bound volumes of the Commission. Operating authorities involving the transportation of dressed poultry were obtained by a vast number of motor carriers pursuant to applications filed with and heard by the Interstate Commerce Commission and supported by evidence submitted on behalf of all of the most important meat packers of the country as well as many of the most important commercial poultry processors. There is nothing revealed in unreported cases of the Commission which would indicate that any of the shipper interests or any carrier applicant ever contended prior to or since the *Determination Case* that dressed poultry should be classified as a so-called exempt commodity. The contention that dressed poultry was within the purview of the exemption was not advanced with any vigor until the year 1948, at which time the Secretary of Agriculture alone urged the Commission to reverse its long-standing position with respect to dressed poultry and classify it as exempt. At this point it is appropriate to point out that no individual commercial poultry processor intervened in the *Determination Case* for the purpose of urging the acceptance of the views of the Secretary of Agri-

culture with respect to the classification of dressed poultry.

As seen, the Commission decisions involving dressed poultry represent a uniform interpretation of long standing which has been accepted both by the shipping public and motor carriers. The interpretation is one following extended consideration and meets every test of reason and more important achieves a result consistent with the congressional purpose.

The Commission's consistent, uniform and long-standing construction of the statutory terms in question as applied to processed poultry had formerly been accepted by the Department of Justice and for a number of years the Attorney General, through his local District Attorneys, had subjected to criminal prosecution carriers for engaging in the transportation of fresh and frozen poultry without appropriate operating authority from the Commission. As recently as March 15, 1953, the United States District Court for the Northern District of Iowa, in *U.S. v. S.S.D. Trucking Corp. and Samuel Ginsberg*, (not reported), imposed fines of \$1,400 on each defendant for having transported dressed beef without authority, and on March 31, 1953, the U. S. District Court for the Northern District of Illinois imposed a fine of \$1,000 on the uncertificated carrier for having engaged in the transportation of dressed poultry. Earlier, on March 19, 1948, the United States District Court for the District of Delaware, in *U.S. v. Reed Trucking Co. Inc.*, (not reported) the defendant was fined \$250 for transporting dressed poultry without authority. The same court, on October 4, 1950, imposed fines on Reed Trucking Co., Inc. and H. & H. Poultry Company totalling \$16,300 because the shipper had been granted rate con-

cessions on dressed poultry traffic. Had the traffic been exempt, as now contended, published rates would not have been required to be charged and the prosecutions could not have been instituted.

After having enforced the Commission's interpretation of the statute involved as indicated above, the Department of Justice refused in the lower court to defend the order of the Commission in every respect consistent with its own earlier application of the statute which, indeed, was accepted by the courts imposing the fines.

POINT IV

THE INDUSTRIAL PROCESSES AND METHODS UTILIZED AND PRACTICES AND CUSTOMS FOLLOWED BY THE MEAT PACKING INDUSTRY AND POULTRY PROCESSING INDUSTRY SINCE 1935 IN THE GROWING, PROCESSING, MARKETING, AND DISTRIBUTION OF FRESH AND FROZEN MEAT AND FRESH AND FROZEN POULTRY CLEARLY DEMONSTRATE THAT SUCH PRODUCTS ARE "MANUFACTURED" AS THAT TERM IS USED IN SECTION 203 (b) (6) OF PART II OF THE INTERSTATE COMMERCE ACT.

(a) Beef, Veal, and Lamb Processing and Packing Constitute Manufacture

The publication entitled "Beef, Veal, and Lamb Operations," 4th Revised Edition, prepared and edited by the Committee on Recording of the American Meat Institute (1952) referred to in paragraph 31 of the stipulation of facts (RB 81) and incorporated by reference in the record made before the Commission, demonstrates in great detail that the business of slaughtering, processing, and preparing for market the products of slaughter is not only a highly specialized operation requiring skilled labor, but is an industry wholly dependent for successful operation on the use of technically complex and expensive machines and mechanical aids and devices. The degree of spe-

cialization present and the complexity of the operations, facilities, and equipment used in the meat packing industry is also evidenced by the regulations governing meat inspection of the United States Department of Agriculture, a copy of which was put in evidence in the proceeding below as Exhibit No. 27. The most casual perusal of those regulations convincingly demonstrates that the requirements contained therein are those applicable to processes of manufacture. The textbook above referred to, as well as the materials contained in Exhibit 21 (RB 147), present abundant evidence showing that the change brought about by and following slaughter of animals constitutes a change of essence and the resultant products, including fresh meat and frozen meat, are substances with a markedly different *form, quality, and properties*, and suitable only for purposes other than those possible while the animal remained in the live state. To state it briefly, the *essential* change occurs in the production of *animal meat* from a *meat animal*. The process is clearly one of manufacture under the definition of that term in *Fruit Growers, Inc. v. Brodger Co.*, 283 U.S. 1, and the resultant products cannot reasonably be included within the term "agricultural commodity" as defined by the Commission or by Congress in the Renegotiation Acts, *supra*. That the change occurring in slaughter and processing of animal carcasses in meat packing houses constitutes a change in essence is so apparent that, like axiomatic propositions, it is difficult to offer extended proof in support thereof. Perhaps the most effective illustration of the point to be made is that the meat animal in the live state possesses all the powers, properties, and qualities of life, including an ability to propagate—the animal meat, on the other hand, as a product of

slaughter, has none of the essential properties of a living thing and has as its sole purpose and usefulness—edibility. In this connection it is here appropriate to quote the language of the United States Emergency Court of Appeals in *Superior Packing Company v. Clark*, 164 Fed. 2d, 343, where it was determined, among other things, under the Emergency Price Control Act, 50 U. S. C. A. Appendix Section 924(e) and regulations issued pursuant thereto that products of slaughter were not agricultural commodities as that term was used in the statute. On that point the court stated: (page 349)

“A live steer is an ‘agricultural commodity,’ produced on a farm and sold by a farmer in its raw, natural or unprocessed state. A beef carcass, a wholesale cut, retail cuts such as steaks, or roasts, beef brains, kidneys, hearts, livers, or other edible by-products, as well as meat products resulting from still further processing, such as sausages—these are all distinct commodities not produced on the farm and sold by farmers. They are not ‘agricultural commodities,’ but commodities ‘processed or manufactured in whole or substantial part’ from the agricultural commodity, the live steer. The slaughterer’s operation of producing these various meat products would be described as a processing operation in the everyday use of words, and it certainly is such from the point of view of the steer.” (Emphasis added.)

In support of its conclusion, the court referred to portions of the legislative history of the statute in question and quoted certain language of Senator Bankhead, which we believe accurately reflects the general scope and limits of protection to which the Congress considers the farmer or agricultural community entitled: (page 349)

"In explaining his willingness to make this change, Senator Bankhead said that of course 'we had no desire to have the amendment cover anything but products dealt with by the Department of Agriculture and in the production and price of which the farmer, the agricultural producer, has a direct, immediate, primary interest.' (88 Cong. Rec. 160) The course of the debate makes clear that it was the intention not to require prior approval by the Secretary of Agriculture in the case of regulations relating to commodities processed or manufactured from agricultural commodities. See 88 Cong. Rec. 160, 172, 173, 180, 186. See also *Bowles v. American Brewery, Inc.*, 4 Cir., 1945, 146 F. 2d 842, 844."

(b) Poultry Processing and Packing Constitute Manufacture

Appellants contend that since it has been held that products of slaughter such as fresh and frozen beef, veal, lamb and pork are subject to the certificate, permit and general economic regulatory provisions of Part II of the Act, it must also be concluded that products of poultry slaughter including fresh and frozen cut-up or eviscerated chickens and turkeys are subject to the same provisions. It should be noted in this connection that although the Commission sustained that contention both in the *Determination* case and in this proceeding below, its conclusions with respect to products of slaughter rest on grounds different from those concerning poultry products. In *East Texas, et al., v. Frozen Food Express*, the Commission stated: (RB 40)

"Although, as will be seen, we conclude that neither type of commodity is within the exemption provided by the statute, the reasoning in support of such conclusion differs as to the two classes of commodities. Obviously the exemption, if any, of

vehicles used in the transportation of dressed poultry depends upon whether that commodity is an 'agricultural commodity' or a 'manufactured product thereof.' In the case, however, of dressed livestock or those packing-house products derived from the slaughter of livestock, that issue is not, in our opinion, controlling."

(Continuing, it was stated: (sheets 4 and 5)

"Thus, from the beginning of motor carrier regulation by us an exemption has been provided in section 203(b) (6) of vehicles used in the carrying of 'livestock' or 'ordinary livestock,' and also in the same section an exemption of vehicles used in the carrying of 'agricultural commodities.' The latter exemption does not duplicate the former nor did it establish a second exemption of vehicles used in carrying ordinary livestock. On the other hand, it must be concluded that the exemption of vehicles used in carrying ordinary livestock ends upon the slaughter of the livestock when it loses its identity as livestock, and that there was no intent in the same section to provide a further or second exemption of vehicles carrying the packing house products which result from the slaughter, on the theory that such commodities are 'agricultural commodities.' A Congressional intent, had there been one to exempt the transportation not only of ordinary livestock but also of the products of the slaughter thereof, would unquestionably have been so simple to state that the failure to do so negatives any such strained construction of the language actually used to accomplish that end. This conclusion conforms to that made by us in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, hereinafter referred to as the *Exemption case*."

Notwithstanding the fact that the Commission placed primary reliance for its conclusion with respect

to products of slaughter on the reasoning set forth above, it also concluded, quite properly, we think, that the exemption would not extend to fresh or frozen meat, for the reason that they are, *in fact*, manufactured.

With respect to poultry products, the Commission, in both the *Determination* case and in the proceeding below, concluded that fresh and frozen poultry were, *in fact*, manufactured agricultural commodities. Without regard to the differing rationale in support of the conclusions, the ultimate result achieved clearly reflects a consistency necessary to sound, intelligent, and effective regulation. In support of that proposition, it need only be recognized that both fresh and frozen meat and fresh and frozen poultry (a) compete in the market place with each other (as well as with other meat and poultry products conceded to be subject to regulation) for the same dollar of the housewife; (b) are processed and marketed in many instances in identical manner by meat packers that are engaged in the manufacture and distribution of other meat and poultry products that are admittedly manufactured and subject to regulation; (c) are oftentimes shipped or stored together or with other manufactured food products in the same vehicles or storage places, and when transported in the same vehicle with other manufactured food products are clearly subject to all regulatory provisions of the Act.

In the light of the foregoing facts, to conclude that products of slaughter are subject to all regulatory provisions of the Act and to conclude to the contrary with respect to poultry would impute to Congress not only an intent to discriminate without reason between competitive food products in exactly the same state, hav-

ing undergone almost identical processes of manufacture, as hereinafter shown, but in addition, would impose insurmountable practical difficulties on the agency charged with the duty of administering the Act.

The facts set forth in the stipulation with respect to preparing dead poultry for market (RB 82-86) establish that the poultry processing industry like meat packing is an important, highly-specialized business carried on in the main by large commercial operators and it is a business requiring for its successful operation technically complex apparatus and mechanical aids and devices. Poultry processing plants are in many ways similar in layout and basic construction to meat packing plants. That is to say that the various processes required are performed pursuant to a fixed pattern of operation usually with the same personnel performing the same functions on each bird. The detail of processing poultry for market is set forth in the Record. (RB 84)

In *I. C. C. v. Weldon*, 90 F. Supp. 873, affirmed, 180 Fed. (2d) 367, cert. denied, 342 U.S. 827, the fact that raw, unshelled peanuts required the use of elaborate machinery to remove the shells led the District Court to conclude that the shell removal process constituted a process of manufacture and hence shelled peanuts were found to be manufactured products under the provisions of Section 203 (b) (6). Appellants contend that the machinery, equipment, utensils and plants used in the processing of poultry, being even more complex than that used in peanut processing, would certainly support the conclusion that poultry processing constitutes manufacturing under the *Weldon* decision.

POINT V

THE COMMISSION'S ACTION IN THE PROCEEDING BELOW IS BASED ON AN INTERPRETATION OF THE EXEMPTIVE LANGUAGE COMPLETELY CONSISTENT WITH (A) THE NATIONAL TRANSPORTATION POLICY, THE GENERAL PURPOSES OF PART II OF THE INTERSTATE COMMERCE ACT, AND (B) IS SUPPORTED BY ADEQUATE FINDINGS WHICH IN TURN ARE BASED ON SUBSTANTIAL EVIDENCE.

(a) National Transportation Policy

This Court has recognized that the specific sections of all parts of the Interstate Commerce Act must be considered and interpreted in the light of the National Transportation Policy and the purpose of the act as a whole and with a constant realization of the evils sought to be corrected by the legislation. Even where the Commission had but clouded or doubtful specific power to act as it did; the court has upheld orders of the Commission by pointing to the general powers and broad authority contained in the National Transportation Policy. *American Trucking Associations v. U. S.*, 344 U. S. 298, *U. S. v. Pennsylvania Railroad Company*, 323 U. S. 612. In the last case cited it was said:

"The very complexities of the subject have necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action and in the light of the Congressional purpose to foster an efficient and fair national transportation system."

In the earlier case this Court acknowledged the practical difficulties facing the legislature when enacting regulatory statutes and indicated why it is that such legislation sometimes fails to include precise grants of power and stated:

"Its very absence, moreover, is precisely one of the reasons why regulatory agencies such as the Commission are created for it is the fond hope of their authors that they bring to their work the experts' familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess." 344 U.S. 310

In that case the court went on to sustain the validity of regulations issued by the Commission governing the lease and interchange of vehicles by motor carriers, and, in doing so, rejected the Department of Agriculture's contention that the regulations would restrict the scope of the exemptions of the section here in question. The court further recognized that the purpose of the rules was to protect the industry from practices detrimental to the maintenance of sound transportation services and that the rules were aimed at conditions sought to be corrected by Congress in subjecting the industry to regulation. Although the action taken by the Commission in the *Leasing* case was somewhat different in nature than that taken in the *Determination* case and in the proceeding below, the result sought to be achieved is identical; i.e., to avoid return of the chaotic conditions which led to the enactment of Part II of the Interstate Commerce Act.

In *U. S. v. American Trucking Association, Inc.*, 310 U.S. 534, a case in which this Court was called upon to construe other undefined words of the same Act, Justice Reed, in reciting the controlling principles of statutory interpretation, stated: (page 543)

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legis-

lation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this court has followed that purpose rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination." (Citations omitted.)

Continuing at page 544 he said:

Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown." *United States v. Jefferson Electric Mfg. Co.*, 291 U.S. 386, 396.

Earlier, in the same opinion, the court had given recognition to the Congressional purpose in enacting the regulatory scheme governing motor transportation when it stated: (Page 538)

The difficulty and wide scope of the problems raised by the growth of the motor carrier industry were obvious. Congress sought to set out its purpose and range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of transportation and cooperation with the several states in their efforts to systematize the industry.

(b) Adequate Findings and Substantial Evidence

It is, of course, recognized that to be valid, orders of an administrative body must be supported by evidentiary findings, ultimate fact findings and, in turn, by substantial evidence on the record considered as a whole. Administrative Procedure Act, Title 5 U.S.C. 1001 *et seq.*, *Universal Camera Corp. v. N. E. R. B.*, 340 U. S. 474. Appellants contend that the order of the Commission bears no such infirmity for it was entered upon a carefully prepared statement of all essential findings which in turn were based on documentary evidence and stipulated facts drawn therefrom. It seems sufficient to state that the record and findings of the Commission adequately justify the conclusions and order entered thereon. Most important in connection with this point is that the attack made on the Commission's order did not allege either an insufficiency of evidence or inadequacy of fact finding.

POINT VI

THE KROBLIN CASE REFLECTS AN INCORRECT APPLICATION OF THE PROVISIONS OF SECTION 203 (b) (6) OF THE ACT.

The current controversy regarding the proper construction of the exemptive language of the Act had its genesis in the decision of the United States District Court for the Northern District of Iowa in *I.C.C. v. Kroblin*, 133 F. Supp. 599. In that case, the Commission filed a complaint against Allen E. Kroblin, Inc. alleging that the defendant was unlawfully engaged in the transportation of New York dressed and eviscerated poultry in interstate commerce. The relief sought by the Commission was to restrain the defendant from the further performance of the operations complained of until such time as it had acquired appropriate authority from the Interstate Commerce

Commission. The District Court refused to grant the injunction on the grounds that the commodities transported by the defendant were unmanufactured agricultural commodities, and, on appeal, was sustained by the United States Circuit Court of Appeals, 212 F. 2d 555. This Court denied certiorari on October 14, 1954. *I.C.C. v. Kroblin*, 348 U. S. 836.

The District Court's action in this proceeding was grounded primarily on the *Kroblin* case and appellees place reliance thereon in support of their contentions here.

Appellants urges this Court to reject the interpretation placed on the statutory terms in *Kroblin* not only because the District and Circuit Courts ignored past administrative and judicial interpretation of the section and the essential purposes of the Act as a whole, but in addition, because the District Court in that case improperly considered testimony developed in connection with subsequent proposed amendments to section 203(b)(6) in attempting to determine the intent of an earlier Congress which originally framed the language of the exemption.

As stated in the Court's opinion at page 630, its real basis for decision is as follows:

"There are two features that stand out most predominantly in the voluminous legislative history relating to amendments made or proposed to Section 203(b)(6). One feature is that every amendment that Congress has made to it has broadened and liberalized its provisions in favor of exemption and the other feature is that although often importuned to do so, Congress has uniformly and steadfastly refused or rejected amendments which would either directly or indirectly

have denied the benefits of the exemptions contained therein to truckers who are engaged in operations similar to that of the defendant herein. It is believed that the actions and attitude of Congress as manifested in connection with amendments to Section 203(b)(6) are preponderantly indicative of an intent on the part of Congress that the words "manufactured products" used in that subparagraph are not to be given the restricted meaning contended for by the Interstate Commerce Commission herein."

The Court's opinion also set forth an extended discussion of the legislative history of Section 203(b)(6) together with a thorough review of a number of Commission and court decisions involving the interpretation of the statutory terms of the language of Section 203(b)(6). An analysis of the opinion indicates quite clearly, however, that a number of the cases discussed by the Court including *I. C. C. v. Service*, 186 F. 2d 400; *I. C. C. v. Dunn*, 166 F. 2d 116 and *I. C. C. v. Love*, 77 F. Supp. 63 have no direct bearing on the issue there involved for the reason that they were concerned with interpretation of language of the section other than "agricultural commodities (not including manufactured products thereof)". But, as seen from the Court's statement above quoted, the decision is not based on the legislative history of the provision of the law required to be interpreted; nor—on administrative or judicial precedents—instead it appears that the District Court based its decision on incorrect inferences drawn from the testimony of *witnesses* appearing before Congressional committees in connection with later legislation. It should be noted that the Court incorrectly refers to the *transcript of testimony* taken in the Senate hearings under Senate Resolution 50 as Senate Committee Reports. The only *report* is-

sued in connection with the Senate Resolution 50 was Senate Report 1039, 82d Congress, First Session. An excerpt from that report, pages 13-15, dealing with the agricultural commodities exemption is attached to this brief as Appendix C.

Although we believe the District Court improperly considered testimony relating to subsequent proposed legislation as an extrinsic aid to construction of the statute before it, we agree that in some instances Congressional action or inaction on proposed legislation may indicate satisfaction or dissatisfaction with past administrative construction of the existing statute. Applying that thought here, it is submitted that the failure of Congress to amend Section 203 (b)(6) so as to specifically include poultry, dead (dressed or undressed) within the terms of the exemption constitutes implied endorsement by the Congress of the Commission's action on that commodity in the *Determination* case and in earlier decisions holding dressed poultry to be non exempt.

During the hearings under Senate Resolution 50, the Senate was made aware by the testimony of Commissioner Walter M. W. Splawn, among others¹ that the Commission in the *Determination* case and other proceedings had declared poultry (other than live) not to be an exempt commodity. The fact having been brought to the attention of the Senate Committee dealing with transportation legislation certainly is clear evidence of the fact that Congress not only had knowledge of the Commission's holding but it placed its approval thereon, for if Congress had disagreed with the Commission's decision with respect to poultry

¹ Domestic Land and Water Transportation, Transcript of Hearings before the Committee on Interstate and Foreign Commerce, United States Senate March 3-April 9, 1953 page 421-2.

(other than live) it could have provided for clarification in the legislation in which it made horticultural products subject to the exemption. (1952 amendment). "The reenactment of the statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed." *National Lead Co. v. United States*, 252 U. S. 140, 146, and *McCaughen, Collector of Internal Revenue v. Hershey Chocolate Co.*, 51 S. Ct. 510.

CONCLUSION

Nos. 158, 159, 160 & 161

Appellants respectfully pray this Court to hold that the Commissions' decision in the *Determination Case* is subject to judicial review, and accordingly to reverse the decision of the Court below and remand the case with appropriate instructions for further proceedings.

Nos. 162, 163 & 164

Appellants respectfully pray this Honorable Court to reverse the decision of the Court below insofar as it held that fresh and frozen dressed poultry are exempt agricultural commodities within the purview of §203(b)(6) of the Interstate Commerce Act.

Respectfully submitted,

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Certificate of Service

I, Francis W. McNerny, one of the attorneys for the several Appellants, on whose behalf the foregoing brief is submitted, and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing document on counsel for the several parties to this proceeding as indicated below.

This, the 11th day of January, 1956.

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APPENDIX A

STATUTES INVOLVED

NATIONAL TRANSPORTATION POLICY [49 U.S. Code preceding §§ 7, 301, 901 and 1001] reads as follows:

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense: All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

The material parts of the Interstate Commerce Act are:

SECTION 203 (b) (6) [49 U.S. Code 303 (b) (6)]

Nothing in this part, except the provisions of Section 204 relative to qualifications, and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *

SECTION 205 (g) [49 U.S. Code 305 (g)]

(g) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under section 2284 of title 28 of the United States Code, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

SECTION 206 (a) [49 U.S. Code § 306 (a)]

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

(a) (1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however*, That, subject to section 210, if any such carrier or predecessor, in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission

as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207 (a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further*, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

(2) Unless otherwise specifically indicated in such certificate, the holder of any certificate heretofore issued under this part, or hereafter issued under this part pursuant to an application filed on or before the date on which this paragraph takes effect, authorizing the holder thereof to engage as a common carrier by motor vehicle in the transportation in interstate or foreign commerce of passengers or property over any route or routes or within any territory, may without making application under this section engage, to the same extent and subject to the same terms, conditions, and limitations, as a common carrier by motor vehicle in the transportation of passengers or property, as the case may be, over such route or routes or within such territory, in commerce between places in the United States and places in Territories or possessions of the United States.

(3) Subject to the provisions of section 210, if any person (or its predecessor in interest) was in bona fide operation on March 1, 1950, over any route or routes or

within any territory, as a common carrier engaged in the transportation of passengers or property by motor vehicle in commerce between any place in the United States and any place in a Territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on March 1, 1950, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor interest had no control, the Commission shall issue a certificate authorizing such operations without requiring further proof that public convenience and necessity will be served thereby, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date on which this subparagraph takes effect. Pending the determination of any such application, the continuance of such operation without a certificate shall be lawful. Any carrier which, on the date this subparagraph takes effect, is engaged in an operation of the character specified in the foregoing provisions of this subparagraph, but was not engaged in such operation on March 1, 1950, may under such regulations as the Commission shall prescribe, if application for a certificate is made to the Commission within one hundred and twenty days after the date on which this subparagraph takes effect, continue such operation without a certificate pending the determination of such application in accordance with section 207 (a).

(b) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of paragraph (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the

Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

SECTION 209 (a) [49 U.S. Code 369 (a)]

(a) (1) Except as otherwise provided in this section and in section 210a, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business; *Provided*, That, subject to section 210, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or, if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. Any person, not included within the foregoing provisions of this paragraph who or which is engaged in transportation as a contract carrier by motor vehicle when this section takes effect, may continue such opera-

tion for a period of one hundred and twenty days thereafter without a permit and, if application for such permit is made within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission: *Provided further*, That nothing in this part shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national park or national monument of the United States.

(2) Unless otherwise specifically indicated in such permit, the holder of any permit heretofore issued under this part, or hereafter issued under this part pursuant to an application filed on or before the date on which this paragraph takes effect, authorizing the holder thereof to engage as a contract carrier by motor vehicle in the transportation in interstate or foreign commerce of passengers or property over any route or routes or within any territory, may without making application under this part engage, to the same extent and subject to the same terms, conditions, and limitations, as a contract carrier by motor vehicle in the transportation of passengers or property, as the case may be, over such route or routes or within such territory, in commerce between places in the United States and places in Territories or possessions of the United States.

(3) Subject to the provisions of section 210, if any person (or its predecessor in interest) was in bona fide operation on March 1, 1950, over any route or routes or within any territory, as a contract carrier engaged in the transportation of passengers or property by motor vehicle in commerce between any place in the United States and any place in a Territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on March 1, 1950, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor

in interest had no control, the Commission shall issue a permit authorizing such operations, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after the date on which this subparagraph takes effect. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on the date this subparagraph takes effect, is engaged in an operation of the character specified in the foregoing provisions of this subparagraph, but was not engaged in such operation on March 1, 1950, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after the date on which this subparagraph takes effect, continue such operation without a permit pending the determination of such application in accordance with subsection (b) of this section.

(b) Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 210, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this part and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof and shall attach to it, at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect

to the operations of such carrier, the requirements established by the Commission under section 204 (a) (2) and (6): *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities, within the scope of the permit, as the development of the business and the demands of the public may require.

SECTION 222(b) [49 U.S. Code 322 (b)]

(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

The material parts of the ADMINISTRATIVE PROCEDURE Act are:

SECTION 10 [5 U.S. Code 1009]

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory

review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **REVIEWABLE ACTS.**—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably de-

stance, hauling for his neighbor, or possibly some time reciprocal hauling, and it was our thought, rather, that it should extend so as to include the from the farm to the market haul.

The bill was reported out of Committee, 79 Cong. Rec. 11813, and in the House Committee report to accompany S. 1629, Report No. 1645, 74th Cong., 1st sess., an amendment to the exemption section was provided in the following language:

- (8) motor vehicles used exclusively in carrying livestock or unprocessed agricultural products;

When discussion of the bill was begun on the floor of the House of Representatives the two exemption provisions which related to agriculture were sub-section (6), relating to livestock and unprocessed agricultural commodities and sub-section (9), relating to casual or occasional transportation. The following colloquy relative to the former is reported at 79 Cong. Rec. 12205:

Mr. Andresen. Does the gentleman consider cream unprocessed?

Mr. Rayburn. I do.

Mr. Dingell. I think it is quite evident that canned milk is processed milk. Raw milk in cans, going to market, or separated cream, is not processed.

By that same method you will determine that beef in cans is processed and beef on the hoof is not processed. I think the question is plain beyond doubt and that there is a definite distinction between processed corn in cans and corn coming to the market on the ear.

Mr. Andresen. This is a very important proposition the gentleman is on right now. It is clear, then, that it

includes all farm commodities produced upon any farm in the raw state ready for market.

Mr. Sadowski. On the whole, that is the way the Commission will interpret it. Undoubtedly, the courts will give the same interpretation to it. I do not think we need discuss this further.

The matter was discussed again in connection with the exemption of casual and occasional transportation. At 79 Cong. Rec. 12209, appears this exchange:

Mr. Gilchrist . . . the word "reciprocal" is used. I do not know exactly what that means.

Mr. Mapes. That means if you and I are neighbors owning adjoining farms, and you go to market and bring back something for me and I pay you for it, and then 6 months later I go to market and bring back something for you and you pay me for it, that is a reciprocal transaction and would not come under this legislation.

Further discussion of the exemptions to be provided farmers is found at 79 Cong. Rec. 12213:

Mr. Gillette. That being the case, what was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively? Why not regulate that? What was the object of the exemption?

Mr. Holmes. The object was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm. As an individual owner he would be exempt anyway and would not come under the provisions of the bill.

Mr. Gillette. If regulatory measures were necessary, as were sought to be obtained in this bill, would it not be advisable to apply them to that class of carriers? Why would you exempt a man who is engaged exclu-

sively in carrying livestock, and bring in a farmer who carries livestock on some trip and other materials on other trips?

Mr. Holmes. The farmer who carries livestock on one trip and unprocessed agricultural products on another trip may combine them both and carry livestock and farm products or machinery and be exempt under the provisions of the bill.

Mr. Gillette. Not if he carries other freight.

Mr. Holmes. The purpose of this exemption is that a man who may take a bag of beans or a bushel of potatoes or any other unprocessed agricultural commodity and put it on his truck cannot get exemption from regulation and then go into the general trucking business in competition with his neighbor who has a legitimate permit to operate as a contract carrier.

With this preliminary discussion as a background the amendments made from the floor of the House can be viewed in their proper perspective. The first was the addition of subsections (4)(a) and (4)(b). The discussion relating to this amendment appears at 79 Cong. Rec. 12218, and the motion for amendment at 79 Cong. Rec. 12221 and 12222, by Representative Jones of Texas:

Mr. Jones. Mr. Chairman, the reason I want to rise now is because of a discussion in connection with exemptions. I expect to offer an amendment at the end of the next session, and I would like to read them to the Committee.

Among the exemptions I expect to offer the following:

"Motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farms; or motor vehicles controlled and operated by a cooperative

association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended."

That amendment would do two things. It would permit the farmer hauling his crop to market to haul his supplies back home. In the second place, it would exempt cooperative organizations to comply with the Capper-Volstead Act, which is the standard definition of cooperative recognized since 1922.

Now, I hope I may not be interrupted until I explain the reason for offering this cooperative amendment. This exemption is consistent with the purpose of the act to regulate the use of highways by persons and corporations who use them regularly as places of business and as the primary means of gaining a livelihood. Cooperative organizations do not act as moneymakers in transportation. The hauling is done as a means of reducing the marketing expenses of their members.

Especially in highly organized communities it is almost essential they do some hauling for non-members. Otherwise certain farmers who are only temporarily in the community and in some instances tenants might be left without transportation facilities. In some instances it reduces the expense of handling to combine some hauling for nonmembers. This does not mean going into the general business of transportation. It is merely incidental to the hauling for their own members. It is a practical proposition.

At 79 Cong. Rec. 12220 the amendment to sub-section (6) was discussed:

Mr. Pettengill. Mr. Chairman, we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent

of the committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.

Mr. Whittington. In other words, under the amendment to the committee amendment, cotton in bales and cottonseed transported from the ginneries to the market or to a public warehouse would be exempt if the language remained, because ginning is sometimes synonymous with processing.

Mr. Pettengill. That is correct.

Mr. Truax. Will the gentleman's amendment be in conformity with the wishes of the cooperative milk producers association? They say that unprocessed agricultural products . . . are intended to cover milk and cream being transported from the farm to the country receiving stations or creamery.

Mr. Pettengill. We think it covers that.

Mr. Truax. Therefore, further amendment will not be necessary to strike raw milk from under that clause?

Mr. Pettengill. That is right.

Upon motion of Representative Bland of Virginia, "fish, including shell-fish" was inserted. 79 Cong. Rec. 12220.

The amendment proposed by Mr. Jones, which specifically covered farmers, was formally offered at 79 Cong. Rec. 12220. The contention was again unsuccessfully made that the matter was already covered by the casual exemption. The Jones amendment was adopted at 79 Cong. Rec. 12222 and is now Section 203(b)(4a) of the Act.

Shortly after this amendment, upon motion of Representative Pettengill, sub-paragraphs (6) and (7) were brought forward from the end of paragraph (b), thereby eliminating the discretionary power of the Commission to extend regulation to these categories. 79 Cong. Rec. 12226.

At 79 Cong. Rec. 12226, Mr. Gilchrist offered an amendment which would have substituted the word "primarily" in place of the word "exclusively" in the exemption dealing with agricultural commodities. This was rejected at 79 Cong. Rec. 12227. At 79 Cong. Rec. 12273, Mr. Michener made a statement about S. 1629 prior to the final vote on it: "The bill has been amended in numerous particulars. The farmer is especially cared for. And the bill on which we will vote today, in my judgment, fully protects farm trucking." The amended bill passed the House, 79 Cong. Rec. 12279, and then went to the Senate, 79 Cong. Rec. 12459, where the amendments were read and discussed. At 79 Cong. Rec. 12460, Senator Wheeler was asked to explain the amendments, whereupon he stated: "Mr. President, the House amended the bill in minor details, generally liberalizing the provisions of the measure with reference to trucks which are owned by farmers, and which carry farm products. The bill was also liberalized with reference to associations of cooperative farm organizations. It was liberalized in those respects. I personally have no objections to the amendments, and think the bill is improved." The amended bill was examined and signed in the Senate, 79 Cong. Rec. 12617. Signed by the Speaker of the House at 79 Cong. Rec. 12709, the bill was presented to the President, at 79 Cong. Rec. 12712, and approved and signed by the President on August 9, 1935. 79 Cong. Rec. 12863.

B. Subsequent attempts at amendment

The attempts that have been made, either successfully or unsuccessfully, to amend Section 203(b)(6) of the Interstate Commerce Act since the time of its enactment in 1935 shed little light on the meaning of the phrase "agricultural commodities (not including manufactured products thereof)". If anything, they show that certain interests, including the Interstate Commerce Commission, were disturbed lest the exemption of Section 203 (b)(6), being as broad as it was, and is, disrupt the general scheme of regu-

layed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

The material parts of the JUDICIAL CODE are:

SECTION 1336 [28 U.S. Code 1336]

Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

SECTION 1398 [28 U.S. Code 1398]

Except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action.

SECTION 2284 [28 U.S. Code 2284]

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one

member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days' notice of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail by the clerk, and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be

reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days' notice served upon the attorney general of the State.

SECTION 2321 [28 U.S. Code 2321]

The procedure in the district courts in actions to enforce, suspend, enjoin, annul or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

The orders, writs, and process of the district courts may, in the cases specified in this section and in the cases and proceedings under sections 20, 23, and 43 of Title 49, run, be served, and be returnable anywhere in the United States.

SECTION 2322 [28 U.S. Code 2322]

All actions specified in section 2321 of this title shall be brought by or against the United States.

SECTION 2323 [28 U.S. Code 2323]

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in actions under sections 20, 23, and 43 of Title 49, in the district courts, and in the Supreme Court of the United States upon appeal from the district courts.

The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may

appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Commission, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein.

SECTION 2324 [28 U.S. Code 2324]

The pendency of an action to enjoin, set aside, or suspend any order of the Interstate Commerce Commission shall not of itself stay or suspend the operation of the order, but the court may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the action.

SECTION 2325 [28 U.S. Code 2325]

An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or in part, of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

APPENDIX B

LEGISLATIVE HISTORY OF SECTION 203(b)(6) OF PART II OF THE INTERSTATE COMMERCE ACT.

A. The history of the original language of Section 203(b)(6)

Bills similar to the bill which ultimately was enacted as the Motor Carrier Act, 1935, had been introduced in the 69th Congress and each succeeding Congress up to 1935. The bill which became the Motor Carrier Act was drafted by the late Joseph B. Eastman, one of the country's notable public servants and an outstanding expert in the field of transportation. One of his duties while serving as Federal Coordinator of Transportation under the Emergency Railroad Transportation Act, 1933, 48 Stat. 211 *et seq.*, 49 U.S.C.A. § 250, *et seq.*, was, from time to time, to "submit to the Commission such recommendations calling for . . . [legislation] as he may deem necessary or desirable in the public interest", and those recommendations were to be transmitted to the President and to the Congress, with the comments of the Commission. Accordingly, the Coordinator's Second Report, Sen. Doc. No. 152, 73rd Cong., 2nd Sess., contained a proposed bill for the regulation of motor carriers. Section 303(b) of the Eastman Bill exempted from regulation:

. . . unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 302, shall the provisions of this part apply to: . . . (7) the casual or occasional transportation of persons or property in interstate or foreign commerce for compensation by any persons not regularly engaged in transportation by motor vehicles as his or its principal occupation or business.

The Third Report of the Federal Coordinator of Transportation, House Document No. 89, 74th Cong., 1st Sess., submitted January 30, 1935, included a resubmission of the

Eastman Bill. The quoted category of exempt vehicles which appeared in the first Eastman bill was continued with minor changes. This bill was introduced as H. R. 5262 and S. 1629 in the 74th Congress, 1st Session.

Hearings in the Senate on S. 1629 were held by the Committee on Interstate Commerce from February 25 to March 6, 1935. Coordinator Eastman, the first witness, explained the purpose of the exemption of casual or occasional transportation, as follows, beginning at page 86 of the printed record of the hearings:

Mr. Eastman. There is a provision in the earlier part of the bill, paragraph (b) of section 303, providing for certain exemptions; and one of those is the casual or occasional transportation of persons or property in interstate and foreign commerce for compensation by any person not regularly engaged in transportation by motor vehicle as his or its principal occupation or business.

Senator Hastings. He is exempt?

Mr. Eastman. Yes; unless the Commission brings him in. It is given the power to do that if it appears to be necessary.

Senator Hastings. I have in mind two farmers whose farms adjoin. One of them has a truck. He not only takes his own produce to market, maybe in a single load, but the next day he will take his neighbor's at so much for the load; or they may combine the two and make a single load. Do you think that is taken care of?

Mr. Eastman. If it were casual or occasional transportation of that kind and he was not engaged in transportation by motor vehicle as his principal occupation, I think he would be exempted.

The bill was reported out of Committee, 79 Cong Rec. 5485, and Senate Report No. 482 accompanied it. The report was general in character and did not refer to the matter of

exemptions. The debate on the floor of the Senate is reported, beginning at 79 Cong. Rec. 5649.

Senator Burton K. Wheeler, Chairman of the Senate Committee on Interstate Commerce, explained the various provisions of the bill. Speaking of the exemption of Section 203(b)(7), as amended by the Committee, he said, at 79 Cong. Rec. 5651:

The second conditional exemption provided in the original bill applied to the "casual or occasional transportation of passengers or property in interstate or foreign commerce for compensation by any person not regularly engaged in transportation by motor vehicle as his or its principal occupation or business." This provision was intended to exempt the operations of farmers and others who occasionally haul for-hire, but who do not enter in any important way into for-hire transportation. The addition of the word "reciprocal" and the other change made in this paragraph broadened the exemption in line with suggestions made at the hearings.

Some of the shippers who came before us and some of the smaller individuals thought that the language should be broadened; and in order to cover that we used the word "reciprocal," which they had suggested.

The amendment was agreed to, 79 Cong. Rec. 5660, and the bill was passed by the Senate with this exemption but without a specific exemption covering farmers or farm commodities. 79 Cong. Rec. 5737.

Hearings in the House on H. R. 5262 and H. R. 6016, an alternate bill, were held by the Committee on Interstate and Foreign Commerce from February 19 through March 5, 1935. The first explanation of the relationship of the proposed exemptions to agriculture appears on pages 46 and 47 of the printed report of the hearings. Congressman Wadsworth directed Mr. Eastman's attention to the seventh

category of exemption, dealing with casual or occasional transportation, and asked its purposes, suggesting that it would exempt thousands and thousands of trucks.

Mr. Eastman. Yes, I do not say it is intended to exempt "thousands and thousands." It was really intended to cover the situation of the farmer more than anything else. The farmers operate their own trucks in many instances, and may occasionally do some trucking for their neighbors.

Mr. Wadsworth. I myself engage in farming, and I take it that this would cover it. But my thought was that it will be found there are thousands of trucks carrying cattle to the Chicago stockyards, or to Buffalo or Omaha and many other livestock markets. Many of the farmers own their own trucks and move their livestock to market in that way, or the farmer may hire his neighbor's truck to haul a few cattle for him to market once or twice a week. I do not know whether that is a casual case, but there are large numbers of them. You also have the case of a very large quantity of milk moving in that manner.

Mr. Eastman. Those two last exemptions, no. 6 and no. 7, provided by this legislation, are prefaced by the words which appear in lines 9 to 12:

"Nor unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 302, shall the provisions of this part apply—"

and so forth.

Mr. Wadsworth. Yes.

Mr. Eastman. Now, if it were found by experience that there were being eliminated from regulation, through these exemptions, operations which ought, in the public interest, to be included, the Commission could provide for their inclusion.

Mr. Wadsworth. You think that takes care of it?

Mr. Eastman. Yes; I do.

Recapitulating, it is apparent that the seventh proviso [now Section 203(b)(9) of the Act] of the Eastman bill, exempting the "casual or occasional" transportation was designed to "cover the situation of the farmer", in Mr. Eastman's words, subject to the limitation that the Commission, for good cause shown, could remove from this exemption any portion of the transportation performed pursuant to it.

In the testimony of Earl N. Cannon, representing the Wisconsin Common Carriers' Association, appears the following exchange, at page 238:

Mr. Bulwinkle. Are there any amendments that you would offer to it?

Mr. Cannon. I might say—I believe there is one amendment.

Mr. Bulwinkle. All right; let us hear it.

Mr. Cannon. In Wisconsin we had one problem involving agriculture.

Mr. Bulwinkle: What would your amendment be?

Mr. Cannon. I would amend the bill to exempt the man handling farm and dairy products; exclusively, regardless of where or for whom he hauls such products and to what market.

Mr. Bulwinkle. And what would be your object in that, Mr. Cannon?

Mr. Cannon. I might say in Wisconsin, being a dairy-ing State, we have this special problem coming before us. In fact, the original bill that went to the Supreme Court, I think in the act of 1931 which went to the Supreme Court—which sought to exempt them. The Supreme Court handed down an opinion and said that inasmuch as these trucks were engaged in handling a problem involving the dairy industry it could be exempt.

Now, the problem, Mr. Chairman, that I speak of in Wisconsin is the same kind of a problem that will arise all over the country: it is difficult to regulate; there are so many trucks in so many different communities handling agricultural products that it would be difficult to keep them going along the proper course. I think that you must draw a distinction there.

Mr. Huddleston. The purpose of that distinction being to help the farmers in disposing of their products.

Mr. Cannon. Yes. And then again the number of trucks and the kind of merchandise, type of merchandise, is large, and in the most cases the territory served is small, shipping to various creameries, and so forth.

Mr. Huddleston. Would you extend that to all agricultural products?

Mr. Cannon. To dairying and farm products; yes.

Mr. Huddleston. To fruits and vegetables?

Mr. Cannon. Yes.

Mr. Huddleston. And all other farm products?

Mr. Cannon. Fruits and vegetables; yes.

Mr. Bulwinkle. And cotton?

Mr. Cannon. I do not know about that industry, Mr. Bulwinkle, enough to discuss it.

At page 241, witness Mr. Harry A. Wheeler representing the "transportation conference," including a number of rail-carrier and water-carrier associations, the Grain and Feed Dealers National Association, the Institute of Meat Packers, and the National Association of Manufacturers, among others, summarized its position on the "farm-to-market haul" as a proposed exemption, stating that his conference had proposed "an exemption in the farm-to-market haul", but that it did not regard that of particular significance in view of the definitions that were being given. Wheeler stated:

Clearly the private operator is given a place and our honest thought in the matter was to protect those interests that may have some hauling, a man, for in-

lation of the Motor Carrier Act. It was early recognized that as it was then worded Section 203(b)(6) would exclude from virtually all regulation by the Commission trucks hauling farm products that had been processed at some plant removed from the farm, such as milk that had been pasteurized at a dairy or cotton that had been ginned at a ginnery. It was felt by some that such an exemption was too broad and that Section 203(b)(6) should be reworded to have it apply only to those vehicles first moving the products from the farm.

On May 27, 1939, the Legislative Committee of the Interstate Commerce Commission addressed a letter to Senator Wheeler in which it was proposed that Section 203(b)(6) be rewritten so as to restrict the scope of the provision. The letter explained that the provision now "applies to transportation of agricultural commodities for the commission-man, broker, and other distributors of farm products, both processed and unprocessed" and that such broad exemption in its judgment constituted an unwarranted discrimination. The proposed amendment of Section 203(b)(6) was as follows:

Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell-fish) or agricultural commodities (not including manufactured products thereof) from the point of production to the point of primary market, processing, manufacture, or transshipment, if such motor vehicles are not used in interstate or foreign commerce in carrying any other property or passengers for compensation.

This proposal not having been adopted, on January 29, 1940, the Legislative Committee of the Interstate Commerce Commission again proposed a change in the provisions of Section 203(b)(6). The later proposal was contained in a letter addressed to the Chairman of the House Committee on Interstate and Foreign Commerce and the Chairman of the Senate Committee on Interstate Commerce. The Com-

committees had under consideration S. 2009 which proposed to end the exemption for the transportation of the commodities referred to in Section 203(b)(6) at the point where those commodities first entered the channels of commerce. The proposal of the Interstate Commerce Commission was rejected by the Committees. The portion of that letter of the Commission bearing on this phase was as follows:

As the exemption in paragraph (h) is now worded, in many cases it does not affect transportation for the farmer but applies to transportation of agricultural commodities for the commission man, broker, and other distributors of farm products both processed and unprocessed, a discrimination in favor of one type of commodity which seems unwarranted. In some 21 State statutes this difficulty has been met by limiting the exemption to the transportation of agricultural commodities and livestock from the point of production to the primary market or like point. We suggest, therefore, that the paragraph be amended to read as follows:

(h) The transportation of property consisting of ordinary livestock (including poultry, whole fresh fish (including shell-fish), or agricultural commodities (not including manufactured products thereof), in the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment. The point of production for fish shall mean the wharf or other landing place at which the fisherman debarks his catch, and the point of production for livestock or agricultural products shall include the point at which they are gathered for initial shipment to the point of first sale, manufacture, or transshipment. The point of first sale shall not be deemed to include the point of production. *Omnibus Transportation Legislation*, House Committee Print, 76th Cong., 3rd Sess.

One change was made in Section 203(b)(6) by the Transportation Act of 1940, 54 Stat. 919 *et seq.*, and that was the

insertion of the word "ordinary" before the word "livestock". An explanation of this change was made by the Commission in the second *Monark* case, *supra*, at 44 M.C.C. 18, as follows:

In its first report to the Senate on Senate bill 2009, which as thereafter changed became the Transportation Act of 1940, the Senate Committee on Interstate Commerce explained, "the word 'ordinary' before 'livestock' has been inserted for the purpose of harmonizing that definition with the definition contained in the Cummins amendment, * * * wherein ordinary livestock is defined." The Cummins amendment, section 20(11) of this act, provides that "The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

The effect of this change, among other things, was to lead the Commission to change its interpretation of the status of poultry, which it had first classed as livestock (and therefore exempt only when alive) and which in the last-cited case it held to be an agricultural commodity (but manufactured when dressed).

In 1943, a bill, S. 1148, was introduced in the 78th Congress, 1st Session, by Senator Lodge. The bill would have amended Section 203(b) (6) to read as follows:

Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof), by the producers of such property or by private carriers of property by motor vehicle, if such vehicles are not used in carrying such property or any other property, or passengers, for compensation.

The bill never became law, but, if it had, its effect would have been to limit the exemption to the actual producer or to those hauling without compensation.

On July 9, 1952, Section 203(b)(4a) and (6) of the Motor Carrier Act, were amended by the insertion of the words "including horticultural" after the word "agricultural" in each of said sections. The bill, S. 2357, as originally introduced, as well as several amendments in the nature of substitutes, would have limited the scope of the exemption provided by subparagraph (6) here involved. Originally introduced by Senator Johnson of Colorado, the bill would have provided for Section 203(b)(4a) to read, as follows:

Motor Vehicles controlled and operated by any farmer, (i) transporting supplies to his farm, or (ii) transporting ordinary livestock as defined in Section 20(11) of this Act, or agricultural commodities (not including livestock or commodities which have been processed to a greater extent than is customarily done by farmers) prior to their marketing by the farmers raising or producing such livestock or commodities, if such motor vehicles are not used at the same time or on the return trip or customarily in any other kind of transportation for compensation . . .

Section 203(b)(6) would have been amended to provide for the partial exemption of vehicles transporting fish only. Several amendments to the proposed legislation were offered; however, each of them would have had the effect of substantially limiting the scope of the partial exemption of Section 203(b)(6) by eliminating almost completely any exemption with respect to any transportation not performed by the farmer himself. Sen. Rep. No. 1615, 82nd Cong., 2nd Sess., accompanying S. 2357, p. 2.

These attempts at amending the wording of Section 203(b)(6) following the passage of the Motor Carrier Act to limit the exemption to only those vehicles actually employed by the farmer in carrying his products to market in no way alter the fact that the purpose of the exemption was to aid the farmer.

APPENDIX C

AN EXCERPT FROM SENATE REPORT NO. 1039, 82ND CONGRESS, FIRST SESSION.

(Progress Report of the Senate Committee on Interstate and Foreign Commerce, by its Domestic Land- and Water Transportation Subcommittee, pursuant to S. Res. 50, 81st Congress.)

B. THE AGRICULTURAL COMMODITIES EXEMPTION.

The Motor Carrier Act of 1935, now part II of the Interstate Commerce Act, specifically excluded from regulation, except in matters of safety generally, certain types of motor carriers and other carriers engaged in certain types of transportation. This general escape section exempts, among other carriers, "motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation." The legislative history of this so-called agricultural product exemption tends to show that the provision was written into the Motor Transportation Act for the limited purpose of exempting from general regulation the farm-to-market or wharf-to-market transportation by motor carrier for the farmer or for the fisherman. The clause was suggested as an amendment to the legislation by the House Interstate and Foreign Commerce Committee after lengthy consideration and in the following language:

"motor vehicles used exclusively in carrying livestock or unprocessed agricultural products;"

On the floor of the House, the exemption was broadened to include fish and shellfish. The word "unprocessed" was stricken, and the parenthetical phrase "not including manufactured products thereof" was inserted as a modification

f the exemption of agricultural commodities, at least partly to assuage the fears of those legislators who questioned whether commodities such as pasteurized milk might be interpreted as processed under the law. The requirement that motor vehicles, to be exempted under this clause, had to be used exclusively for the carriage of livestock or agricultural commodities was eliminated in favor of the condition: "if such motor vehicles are not used in carrying any other property, or passengers, for compensation," a change which must have seemed of little consequence at that time but which was made to avoid restricting the farmers' use of hired vehicles to transport supplies to the farm. Finally, and again by amendment from the floor of the House, the operation of the exemption was made absolute by moving it from under the conditional and discretionary administration of the Interstate Commerce Commission, who, in the absence of this move, might have applied such regulatory measures as it deemed necessary to carry out the national transportation policy.

Subsequent administrative and judicial interpretations have broadened further the scope of the agricultural products exemption. The prohibition in the law which denied exemption to vehicles carrying other property or passengers for hire has been stripped of much significance by the decision in *Interstate Commerce Commission v. Parker & Dunn*, which, in effect, wrote the words "at the same time" into the condition. Further, the admittedly loose language of the commodity descriptions has been stretched to cover a variety of products which hardly would have come under the original adjective "unprocessed."

The net effect of these interpretations has been to apply the exemption not only to the carrier for the farmer and sherman—for whom it was intended—but also to dealers, and processors of, agricultural commodities and fish. Further, the broadness of the exemption has encouraged the rise of a vast armada of exempt truckers who success-

fully avoid all regulation by a combination of the hauling of exempt commodities with the practice of trip leasing.

The operations of exempt carriers by motor are not insignificant. There are approximately 40,000 truckers exempted by this clause on the highways today in comparison to 20,042 motor common carriers subject to regulation. Under the court-broadened exemption, many contract and private carriers are hauling exempt commodities as return loads, to avoid the costly misfortune of returning empty. The chief advantage of exemption from regulation, insofar as these motor carriers are concerned, is the ability to sell their services far below the established rates of common carriers by rail or motor. Further, on return runs even of nonexempt loads, the exempt carrier may, either by trip leasing or by absorbing the mark-down on the exempt run, haul at less than the published tariff.

The effect of these practices on competing common carriers by rail or motor is a serious loss of traffic. Railroads are forbidden to meet lower rates without posting proposed new rates 30 days in advance of the effective date; a requirement which obviously makes it an impossibility to match tariffs with an unregulated carrier. The situation is one which, if allowed to continue, will greatly unbalance the national transportation system. In order to preserve the system and to promote its development, it seems incumbent on Congress to insure that the regulation it has prescribed does not destroy the regulated carriers.

Witnesses appearing before the subcommittee for common carriers by rail and motor advocated restrictive modification or repeal of the exemption. Even at the time the act was being considered, there was informed support for the position that the agricultural product exemption was surplusage. The late Joseph B. Eastman, then Federal Coordinator of Transportation, believed that the exemption of farmer owned and operated motor carriers for transportation of farm produce or supplies, coupled with

the exemption of casual, occasional, or reciprocal transportation, both included in his proposals would adequately meet the situation. As might be expected, farm and cooperative groups were vehement in their protests against any modification of the exemption. Farmers generally have been, and understandably are, concerned over increased cost of transportation to market, should regulation be applied to that transportation.

It is conceded that any modification of the exemption should safeguard the farm-to-market move. On the other hand, before the Dunn decision, for-hire motor carriers on the farm-to-market runs were regulated generally and that experience indicated no increase in motor rates to rail rate levels. In fact, rail rates on the average dropped to regulated motor-carrier rates. The fears of the farm groups in these respects seem to be largely groundless.

The subcommittee is convinced that the present situation with respect to exempt carriers is intolerable. The effect on the national transportation system, as a whole, is contrary to the best public interest. It is far from clear, however, that the ~~agricultural products exemption~~ could be entirely repealed without doing injury to the farmers and violence to the intent of Congress in enacting the exemption. There is a place in the agricultural transportation picture for an exempt motor carrier for hire who could neither qualify under the farmer-owned or casual and occasional exemptions. It is quite clear from the evidence, however, that the operations of such a carrier should be curtailed sharply, limited to carriage from farm or wharf to the primary market, and restricted from competition in the nonexempt commodity traffic market. Further, the nature of exempt commodities clearly needs careful redefinition. Finally, it seems advisable to reimpose the judgment of the Interstate Commerce Commission as to the extent of the exemption, setting as a standard interference with the effectuation by the Commission of the objective of the national transportation policy.

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In the Supreme Court of the United States

OCTOBER TERM, 1955.

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS, THE SECRETARY OF AGRICULTURE, ET AL.

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS, ET AL.

AKRON, CANTON & YOUNGSTOWN R. R. CO., ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON
DIVISION

MOTION TO AFFIRM

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In the Supreme Court of the United States

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No. 163

INTERSTATE COMMERCE COMMISSION, APPELLANT

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APPELLANTS

v.

FROZEN FOOD EXPRESS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON
DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1 (c), of the Revised Rules of this Court, appellees United States of America and Ezra Taft Benson, Secretary of Agriculture, move that the judgment of the district court be affirmed.

STATEMENT

These are direct appeals from that portion of a final judgment, entered February 23, 1955, by a three-judge district court convened pursuant to 28 U.S.C. 2284 and 2325, which set aside in part an order of the Interstate Commerce Commission. The order directed a motor carrier to cease and desist from transporting certain commodities without a certificate of public convenience and necessity.

Section 203 (b) (6) of the Interstate Commerce Act exempts from the Act's economic regulatory provisions motor vehicles used in carrying "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)."

In December 1953, three motor carriers filed a complaint with the Commission alleging that appellee Frozen Food Express had transported fresh and frozen meats and fresh and frozen dressed poultry without certificate authority. Frozen Food admitted the transportation but contended that it came within the agricultural exemption. The Commission held that neither commodity was exempt, and issued a cease-and-desist order.¹ *East Texas Motor Freight Lines v. Frozen Food Express*, 62 M.C.C. 646. The Commission concluded that although live poultry is an agricultural commodity, neither killed poultry nor any product thereof is such a commodity. The Commission further held

¹ The case was decided on stipulated facts without a hearing.

that fresh and frozen meats are neither "ordinary livestock" nor "agricultural commodities."²

On appeal the Secretary of Agriculture intervened as appellant and the United States, a statutory defendant, agreed generally with his position. The district court unanimously set aside the cease-and-desist order in so far as it related to fresh and frozen dressed poultry. The court held that those products are "agricultural commodities," and that the processing which they underwent did not make them "manufactured products thereof." The court upheld the Commission's finding that fresh and frozen meats are not exempt, and no appeal has been taken from that determination.³

The pertinent facts relating to the processing of poultry, as found by the Commission (Jurisdictional Statement, No. 162, App. 17a), are as follows:

² As the Commission noted (Jurisdictional Statement, No. 162, App. 15a), the Act always has provided separate exemptions for "livestock" and for "agricultural commodities." The Commission held (*ibid.*) that "ordinary livestock" refers only to live animals which cease to be such upon being slaughtered, and that the exemption for "agricultural commodities" does not include packing-house products.

³ More than two years prior to the issuance of the cease-and-desist order the Commission, after extensive administrative proceedings, had issued a lengthy report in which it determined whether particular agricultural commodities were within the exemption. Frozen Foods filed a separate suit in the district court to set aside the Determination, but the court dismissed the action without considering the merits, on the ground that the Determination was not a reviewable order. The appeals in Nos. 158-161 are from that judgment of dismissal.

Most poultry is shipped alive from farms to processing plants, where the birds are "first placed on an endless chain and then carried by the chain through the various stages of processing, which include killing, picking, pinning, singeing, cropping and venting, washing, chilling, eviscerating, packaging, and freezing. Picking is done both by machinery and by hand, the mechanical picker consisting of revolving drums equipped with rubber fingers. In some plants the removal of feathers is accomplished by the use of hot wax. The usual method of chilling is to place the carcasses in metal baskets which are then submerged in tanks of ice water long enough to remove all body heat. In the eviscerating process, the body cavity is cut open and the viscera removed, with the liver, heart, and gizzard being cleaned and replaced in the carcass. The eviscerated poultry is then usually wrapped in waterproof paper and packed with ice in crates or barrels. Various methods of dry wrapping are also employed. The freezing of poultry must be accomplished as rapidly as possible and is generally done in a mechanically refrigerated room in which the temperature is maintained at minus 40° Fahrenheit (sic) and the air is circulated at speeds up to 70 miles an hour. After the birds have been frozen by this quick-freeze method, they are placed in cold storage until ready for shipment."

ARGUMENT

These appeals present only the narrow question whether fresh and frozen dressed poultry consti-

ite non-manufactured agricultural products which are within the agricultural exemption of Section 203 (b) (6). We submit that the district court's affirmative answer to that question is clearly correct, and that there is no occasion for further review by this Court.

The rationale of the Commission's decision was that although live poultry admittedly is an agricultural commodity, killed poultry or any product hereof is not. But poultry does not cease to be an agricultural commodity and become a "manufactured product" merely because it has been killed.

The stipulated facts showed, as the district court stated (Jurisdictional Statement, No. 162, App. A), "that before a chicken or duck became dressed poultry, the bird was killed, his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc." Such limited processing, which does not alter the basic character of the product as "poultry," is not sufficient to turn it into a "manufactured product" within the meaning of Section 203 (b) (6). This conclusion is supported by the legislative history of the Act, the settled judicial construction of the term "manufactured," and the only other judicial decision on the question.

1. In an earlier draft, the Motor Carrier Act provided an exemption only for "livestock or *unprocessed* agricultural products" (H. Rep. No. 645, 74th Cong., 1st Sess., p. 1, emphasis supplied). But after fear had been expressed during debate in the House that this provision would not exempt

such processed products as ginned cotton or pasteurized milk, the bill was amended to "strike out the word 'unprocessed' and make it apply only to manufactured products." 79 Cong. Rec. 12,220. The present exemption for "agricultural * * * commodities (not including manufactured products thereof)" thus was intended to cover all non-manufactured agricultural products, processed as well as unprocessed. This interpretation of the Act is further supported by the fact that Congress repeatedly has rejected all attempts to amend the Act to limit the exemption to transportation from the point of production to the point of primary marketing, processing, manufacture or trans-shipment.⁴

The Commission's findings show that dressed or frozen poultry has undergone substantial processing. But such processing is not enough to change it into a manufactured product. Manufacture "implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary * * *. There must be transformation; a new and different article must emerge, 'having a distinctive name, character or use.' " *Anheuser-Busch Assn. v. United States*, 207 U.S. 556, 562. Although a chicken admittedly is "changed" by dressing and freezing, such change

⁴ See *Omnibus Transportation Legislation*, House Committee Print, 76th Cong., 3rd Sess.; S. 2357, 82nd Cong., 2d Sess.; S. Rep. No. 1615, 82nd Cong., 2d Sess.; H. Rep. No. 2175, 82nd Cong., 2d Sess. One proposed bill (H.R. 7547, 81st Cong., 2d Sess.) would have specifically limited the agricultural exemption, in the case of poultry, to "live poultry."

is not enough to make it "a new and different article"; it is still a chicken, albeit a frozen and dressed one.

This Court repeatedly has held that processing comparable to that undergone by poultry in dressing and freezing does not produce a "manufactured" article. Such non-manufactured products have included dressed lumber (lumber which has been planed, grooved, and tongued or beaded),⁵ oranges which have been impregnated with borax to make them decay-resistant,⁶ sea shells which, after removal of several layers of inner shells, have been polished and had mottoes etched on the polished inner shell,⁷ and corks which have been cleaned in an air pressure machine, washed, steamed, dried, and bathed and coated.⁸

We submit that the district court correctly interpreted Section 203 (b) (6) as exempting the transportation of agricultural commodities which, although they have undergone substantial processing, have not been converted into different products by manufacture. The processing which cotton undergoes in ginning is comparable to that undergone by poultry in dressing and freezing. Each remains basically the same product despite the processing, and each is therefore covered by the exemption.

2. In *Interstate Commerce Commission v. Allen E. Kroblin*, 113 F. Supp. 599 (N.D. Iowa), the dis-

⁵ *United States v. Dudley*, 174 U.S. 670.

⁶ *Fruit Growers, Inc. v. Brodex Co.*, 283 U.S. 1.

⁷ *Hartranft v. Wiegmann*, 121 U.S. 609.

⁸ *Anheuser-Busch Assn. v. United States*, 207 U.S. 556.

strict court, after an exhaustive review of the legislative history, concluded that dressed or eviscerated poultry was a non-manufactured agricultural product and accordingly was exempt under Section 203 (b) (6). The Court of Appeals unanimously affirmed, 212 F. 2d 555 (C.A. 8) and this Court denied certiorari, 348 U.S. 836. The *Kroblin* case involved substantially the same question as the cases at bar, and there is no more compelling reason for further review by this Court here than there was in *Kroblin*. Other lower federal courts also have held that similar processing of agricultural commodities does not turn them into manufactured products under Section 203 (b) (6). *E.g.*, *Interstate Commerce Commission v. Yeary Transfer Co.*, 202 F. 2d 151 (C.A. 6) (redried tobacco); *Interstate Commerce Commission v. Wagner*, 112 F. Supp. 109 (M.D. Tenn.) (scoured wool).

CONCLUSION

For the foregoing reasons we submit that the decision below is clearly correct, and that the questions involved do not call for further review by this Court. The judgment of the district court should accordingly be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,
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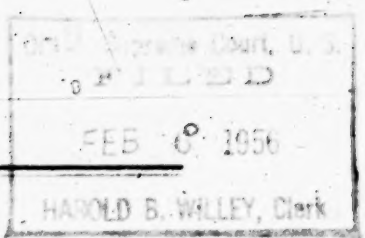
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AUGUST 1955



NOS. 162, 163, 164

In the
Supreme Court of the United States
OCTOBER TERM, 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC., *et al.*,
Appellants,

v.

FROZEN FOOD EXPRESS, *et al.*,
Appellees.

No. 163

INTERSTATE COMMERCE COMMISSION,
Appellant,

v.

FROZEN FOOD EXPRESS, *et al.*,
Appellees.

No. 164

AKRON, CANTON AND YOUNGSTOWN RAILROAD
COMPANY, *et al.*,
Appellants,

v.

FROZEN FOOD EXPRESS, *et al.*,
Appellees.

**BRIEF FOR THE APPELLEE, FROZEN FOOD
EXPRESS**

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DATED: February 4, 1956

DUE DATE: February 6, 1956

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COMPANY, *et al.*,
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v.

FROZEN FOOD EXPRESS, *et al.*,
Appellees.

*On Appeal from the United States District Court for the
Southern District of Texas, Houston Division*

**BRIEF FOR THE APPELLEE, FROZEN FOOD
EXPRESS**

OPINION BELOW

The opinion of the United States District Court for the
Southern District of Texas, Houston Division (Three Judge

Court, January 26th, 1955 (R. 50-60) is reported at 128 Fed. Supp., page 374.

JURISDICTION

The Judgment of the United States District Court for the Southern District of Texas, Houston Division, was entered January 26th, 1955 (R. 60-61). Notice of Appeal was filed on April 20th, 1955, in the District Court of the United States for the Southern District of Texas. The Jurisdiction of this Court rests on Title 28, U. S. C., Sec. 1253 and Sec. 2101(b).

STATEMENT

Appellee ~~Frozen Food Express~~ brought this complaint in the District Court of the United States for the Southern District of Texas, Houston Division (July 12th, 1954), alleging that it desired to transport agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, notwithstanding the limitations imposed by its own certificate, and seeking to enjoin an Order of the Interstate Commerce Commission dated July 13th, 1954 (R. 6-16), which Order directed Appellee Frozen Food Express to cease and desist certain operations in the transportation of fresh and frozen meats and fresh and frozen dressed poultry until appropriate authority could be obtained from the Interstate Commerce Commission.

Plaintiff is a common carrier by motor vehicle in interstate and foreign commerce and is the owner and holder

of Certificates of Public Convenience and Necessity No. MC-108207 and issued by the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, Parts I and II, authorizing the transportation of certain commodities between points and places in the states of Arizona, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, Texas and Wisconsin.

Appellee has transported in the past, in addition to these commodities authorized to be transported by the Interstate Commerce Commission as a common carrier motor carrier since the enactment of Part II of the Interstate Commerce Act, Title 49, 303(b)(6), certain commodities consisting of agricultural commodities (not including manufactured products thereof) between various points in the United States. On such occasions when the vehicles of plaintiff were transporting agricultural commodities such motor vehicles were not transporting any other property or passengers for compensation or hire. That included in such transportation, plaintiff has transported fresh meat, frozen meat, fresh dressed poultry and frozen dressed poultry, it being the interpretation of plaintiff that said commodities are within the intentment of the broad exemption of agricultural commodities (not including manufactured products thereof) as specified in the Act.

On December 23rd, 1953, there was filed before the Interstate Commerce Commission a complaint by East Texas Motor Freight Lines, a corporation of Dallas, Texas,

Gillette Motor Transport, Inc. of Dallas, Texas, and Jones Truck Lines, Inc. of Springdale, Arkansas, alleging that Frozen Food Express, Appellee herein, had been engaged in the transportation of fresh and frozen meats, meat products and dressed poultry, from, to and between points not authorized in any certificate held by it and sought an Order requiring Frozen Food Express to cease and desist from the alleged unlawful and unauthorized operations, etc.

The final Judgment (R. 60, 61) enjoined and restrained the Interstate Commerce Commission from enforcing the Order of July 13th, 1954, insofar as the Order required the Frozen Food Express to ~~cease~~ and desist from transporting, or interfering with its transportation of, fresh and frozen dressed poultry in Interstate commerce for compensation unless the motor vehicle used in the carrying of such poultry is at the same time being used to carry for compensation passengers or other property, not within the exemption provided in Section 203 (b) (6) of the Interstate Commerce Act (49 U. S. C. 303 (b) (6)).

In the answer filed by the United States of America in Cause No. 158, the United States averred that the findings of the Commission in the Determination Order holding that the following commodities are not exempt, were not based on substantial evidence contained in the record, and such findings were arbitrary, unreasonable and unjust and are null and void: (1) slaughtered meat animals and fresh meats; (2) dressed and cut-up poultry, fresh or frozen; (3) feathers; (4) raw shelled peanuts and raw shelled nuts; (5) hay chopped up fine; (6) re-dried tobacco leaf;

(7) cottonseed hulls and linters; (8) frozen cream, frozen skim milk and frozen milk; (9) seeds which have been deawned, scarified or inoculated (R. 24). (Cause No. 158.) Likewise, the Interstate Commerce Commission in its brief, page 10, set forth the position of the various parties in a tabular form.

ARGUMENT

We have involved here the transportation of fresh or frozen dressed poultry and fresh or frozen dressed meat as these commodities relate to agricultural exemptions. Poultry is an agricultural commodity because the chicken was an agricultural commodity before it was killed. Does the fact that it is slaughtered, dressed and transported, fresh or frozen, transform it into a manufactured product?

As originally enacted in 1935, Section 203(b) (6), contained an exemption in transportation performed by motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof). In 1938 the Section was amended to read "motor vehicles used in carrying property consisting of livestock, fish (including shell fish) or agricultural commodities (not including the manufactured products thereof) if such motor vehicles are not used in carrying any other property or passengers for compensation." In 1940, the word "livestock" in the exemption was modified to read "Ordinary Livestock." The term ordinary livestock was previously defined in Section 20(11) of the Act as "all cattle, swine, sheep, goats, horses and mules,

except such as are chiefly valuable as breeding, racing, show purposes or other special uses." Prior to the adoption of the 1940 amendment, the Interstate Commerce Commission had included poultry as livestock. After the 1940 amendment it classified it as an agricultural commodity. *Monarch Case*, 44 M. C. C. 18.

It is the contention of Appellee that poultry is an agricultural commodity and that dressed poultry, fresh and frozen, has not been manufactured and therefore it comes within the exemption of the Interstate Commerce Act, Part II, 49 U. S. C. A., Section 303(b)(6).

The word "manufactured" has been defined in a number of cases involving issues similar to the issue here. In *Frazee v. Moffitt*, 18 Fed. 584, 587 (C. A. 2), it was contended that hay is a manufactured article; that hay is a different or new article transformed from grass, as much as sugar is from the cane juice or the maple sap, or as salt is from the saline brine; that the heat of the sun, and the air, and human skill and labor manufacture the grass into hay. In this case, involving the import duty to be paid on manufactured or unmanufactured articles, the Court concluded that hay is not a manufactured article. Judge Blatchford (in the same year that he became a Justice of the Supreme Court) stated (18 Fed. at 587):

"Many articles are properly called raw which have undergone some manipulation. Cotton is picked from the bolls, and cleaned by ginning, and baled. Yet it is raw cotton in the bale. Wheat is cut, and the grains are threshed out, and then subjected to a cleaning machine, and then bagged. Yet it is raw wheat in the bag. So

with other grains. The cotton and the grains undergo such change and preparation as exposure to light, and natural or artificial heat * * *. Yet neither the cotton nor the grains would be said to be manufactured. Salt and sugar are new articles. Cotton and grains are the same articles they were on the plant with its roots in the earth. So hay is the same article it was when it was stalks of grass with roots in the earth. It is dried to be sure; but the drying and any conversion of starch into sugar are mere incidents of the necessary cutting to enable it to be stored for food in latitudes where grass cannot be found all the year round. Where it can be found no hay is stored. Dried apples would not be called a manufactured article, though the apple is peeled and cored and sliced, and dried by exposure to the sun and manipulation. The substance of dried apples is still apples. The substance of dried grass or hay is still grass."

Similarly, it has been recognized that redried tobacco is an agricultural commodity and not a manufactured product. *Interstate Commerce Commission v. Yeary Transfer Co., Inc.*, 104 F. Supp. 245 (E.D. Ky.), affirmed, 202 F. 2d 151 (C.A. 6); *Gray v. R. J. Reynolds Tobacco Co.*, 200 Ky. 47, 252 S. W. 134; *P. Lorrillard Co. v. Ross*, 183 Ky. 217, 209 S. W. 39; *American Tobacco Co. v. City of Bowling Green*, 181 Ky. 416, 205 S. W. 570. In *Interstate Commerce Commission v. Yeary Transfer Co., Inc.*, 202 F. 2d 151 (C.A. 6), the Court rejected the Commission's contention that the processing of tobacco, in machinery costing from \$35,000.00 to \$75,000.00, for the purpose of removing the moisture from the leaf and standardizing the moisture content, converted the leaf tobacco into a manufactured product within the meaning of Section 203(b)(6) of the Act.

In *Hartranft v. Wiegmann*, 121 U. S. 609, sea shells had been subjected to processing whereby two or three layers of each shell were removed, the inner shell was polished on an emery wheel, and mottoes were etched on the polished inner shell. The Court concluded that the processing involved no significant morphological change in the shells; and in this case under the Tariff Act it was held that the shells were not manufactured articles. The basis of the decision is as follows (121 U. S. at 615):

"We are of the opinion that the shells in question here were not manufactured, and were not manufactures of shells * * * but were shells not manufactured, and fell under that designation in the free list. They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character or use from that of a shell. The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article * * *. Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton."

In *Anheuser-Busch Assn. v. United States*, 207 U. S. 556, corks had been placed in a machine where blasts of air removed the dust, meal, bugs, and worms. Next, the corks were thoroughly cleansed by washing and steaming to remove the tannin and germs and to make the corks soft and elastic. They were then placed in a drying machine until they were thoroughly dry. Finally, the corks were bathed in glycerine and alcohol to close all of the seams, holes, and crevices and to give the corks a coating to prevent the

bottled beer from acquiring a cork taste. The Court held that such processing did not make the corks manufactured articles. In this case, the Court stated, 207 U. S. at 562:

"The words of the statute are indeed so familiar in use and of meaning that they are confused by attempts at definition. Their first sense as used in fabrication or composition—a new article is produced of which the imported material constitutes an ingredient or part. When we go further than this in explanation we are involved in refinements, and in impracticable niceties. Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary * * *. There must be transformation; a new and different article must emerge, 'having a distinctive name, character or use.' This cannot be said of the corks in question. A cork put through the claimant's process is still a cork."

Dressed lumber, i.e., lumber that had been planed, grooved, and tongued or vealed, is not a manufactured article. *United States v. Dudley*, 174 U. S. 670. Such processing of the lumber does not convert the boards and planks into a different article. Similarly, hard wood sticks about one inch in diameter, which are trimmed and peeled, and which have the rough places removed and the ends rounded are not manufactured articles. *United States v. Knipscher & Maas Silk Dyeing Co.*, 152 Fed. 590 (S. D., N. Y.)

An orange that has been immersed in a solution to impregnate the rind with borax, thereby rendering it resistant to decay, is not a manufactured article since the orange "remains a fresh orange fit only for the same bene-

ficial uses as theretofore." *Fruit Growers, Inc. v. Brogden Co.*, 283 U. S. 1, 11-13. Round copper plates cut from rolled sheets of copper and turned up four to five inches at the edges are not manufactured articles. *United States v. Potts*, 5 Branch 284. A compress plant which receives bales of cotton in their original state and compresses, rebinds, and recovers the bales, changing the form, size and condition of the bales so that they are suitable for convenient transportation is not a manufacturing plant. *City of Memphis v. St. Louis and S. F. R. Co.*, 183 Fed. 529 (C. A. 6). Although each of these articles is processed to put it in a marketable condition, none is manufactured since no new or different article is created.

The fact that machinery is used in the processing of the poultry does not transform the processing operation into a manufacturing operation. Congress intended that ginned cotton would be exempt as an unmanufactured agricultural commodity (see also *State v. Tuscaloosa Cotton Seed Oil Co.*, 208 Ala. 610, 95 So. 52), and elaborate and expensive machinery is used in the ginning process. Pasteurized milk is also exempt as an unmanufactured agricultural commodity even though costly machinery is used to process the milk. (See also *City of Louisville v. Ewing Vol-Allmen Dairy Co.*, 268 Ky. 652, 105 S. W. 2d 801; *City of Richmond v. Richmond Dairy Co.*, 156 Va. 63, 157 S. E. 728; *People v. Sohmer*, 218 N. Y. 199, 112 N. E. 755; and *People v. R. F. Stevens Co.*, 165 N. Y. S. 39, appeal dismissed, 221 N. Y. 622, 117 N. E. 1079.) Similarly, corporations employing steam engines,

boilers, machinery and ice tools to cut ice from frozen ponds are not manufacturing corporations since they are merely appropriating an article from nature, and although they process the ice to put it into a marketable condition, they do not produce a new article. *People v. Knickerbocker Ice Co.*, 99 N. Y. 181; 1 N. E. 669; and *Hittinger v. Westford*, 135 Mass. 258. (See also *Commonwealth v. Lowry-Rodgers Co.*, 279 Pa. 361, 123 Atl. 855 (removing the outer skins from coffeebeans and roasting the beans, thereby changing their color, size, and chemical composition is not manufacturing; *In re Elk Park Mining & Milling Co.*, 101 Fed. 422 (D., Colo.) (mining company is not a manufacturer); *Commonwealth v. John T. Dyer Quarry Co.*, 250 Pa. 589, 95 Atl. 797, and *Schumacher Stone Co. v. Tax Commission of Ohio*, 134 Ohio St. 529, 18 N. E. 2d 405 (corporations using stone crushers, boilers, engines, elevators, and screens merely process stone into a marketable condition but do not manufacture a new article); *Commonwealth v. Sunbeam Water Co.*, 284 Pa. 180, 130 Atl. 405 (distilled water is not manufactured); *Cleveland-Cliffs Iron Co. v. Glander*, 145 Ohio St. 423, 62 N. E. 2d 94 (standardizing the mineral content of ores by combining them and removing the foreign material from them is not manufacturing); *Fountain v. St. Joseph Water Co.*, 352 Mo. 817, 180 S. W. 2d 28 (water processed by filtering, purifying, and sterilizing is not manufactured); *People v. Cross & Brown Co.*, 232 App. Div. 587, 251 N. Y. S. 138 (printing and developing pictures is not manufacturing);

and *United States v. Stone and Downer*, T. D. 40296 12 Ct. Cust. App. 293, 295 (processed wool is not manufactured).

Under the rationale of these cases it is clear that dressed poultry is not a manufactured article. Whether it is "New York dressed," i.e., killed and the blood and feathers removed [Layout and Operations of Cooperative Poultry Dressing Plants (December 1946), U. S. Department of Agriculture, Farm Credit Administration, Miscellaneous Report No. 101, p. 3] or subjected to additional "dressing" [the dressing of poultry is explained in detail in Benjamin, Pierce and Termohlen, *Marketing Poultry Products* (4th Ed.), p. 139 et seq.], there can be no doubt that the dressed poultry is in substance poultry. No new article has been manufactured.

The United States District Court for the Northern District of Iowa, Eastern Division, held in this case, after an exhaustive survey of the cases and legislative history, that dressed poultry is an agricultural commodity and not a manufactured product thereof, within the meaning of Section 203(b)(6) of the Act. *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, 113 F. Supp. 599. This is the only judicial precedent on the precise issue as to dressed poultry. [The issue as to whether dressed poultry is an exempt agricultural commodity under Section 203(b)(6) is also raised in *Interstate Commerce Commission v. Woodall Food Products Co., Inc.*, No. 14560, in the United States Court of Appeals for the Fifth Circuit (oral argument submitted on October 5, 1953). The District Court, in the *Woodall* case, decided the case on other grounds.]

On 14 October, 1954, the Supreme Court of the United States denied a writ of certiorari in *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, U. S. , 99 Law Ed. Advance P. . The United States Court of Appeals, Eighth Circuit, on May 11, 1954; had affirmed the decision in the United States District Court for the District of Iowa, 212 Fed. 2d (C. C. A. 8), certiorari denied, 348 U. S. 835.

(*Jones v. Liberty Glass Company*, supra.)

"Laws are to be construed by interpreting their words in their plain and actual meaning ordinary and grammatical sense of their language when the terms are clear and concise."

(*Wigg v. United States* Dev. 157.)

"And it would seem to be a most extravagant supposition it could hold that in the enactment of a law affecting the interest of a nation at large the Legislature should select for that purpose language by which the nation or the mass of the people must necessarily be misled. The popular or received import of words furnishes the general rule for the interpretation of public laws * * * and wherever the Legislature adopts such language in order to define or promulge their action or their will the just conclusion from such a course must be that they not only themselves comprehended the meaning of the language they have selected but have chosen it with reference to the non apprehension of those to whom the legislative language is addressed and for whom it is designed to constitute a rule of conduct; namely, the community at large.

" 'A stocking decked his brow instead of bay,
a cap by night a stocking all the day'."

[*Maillard, et al. v. Lawrence* (1853), 16 Howard 249, 260, 14 Law Ed. 925, 930.]

The issues in this case are closely related to the issues in Cause No. 158 now pending in this Court (Determination of Exempted Agricultural Commodities). A dire need exists for a clear-cut judicial determination of the power and authority of the Interstate Commerce Commission to define what commodities constitute agricultural commodities, as well as a determination of Congressional intent in exempting agricultural commodities from regulation under the Interstate Commerce Act, Part II. It is readily apparent that an area of uncertainty, disagreement and confusion presently exists in this field of transportation. Such areas of dispute and disagreement are reflected in Federal Court decisions, in *Commerce Commission v. Yeary*, 104 Fed. Suppl. 245, 202 Fed. 2d 151 (C. C. A. 6); *Interstate Commerce Commission v. Kroblin, Inc.*, 113 Fed. Suppl. 559, 212 Fed. 2d 555 (C. C. A. 8); *Interstate Commerce Commission v. Weldon*, 90 Fed. Suppl. 873, affirmed 180 Fed. 2d 367, *Certiorari denied* 342 U. S. 827.

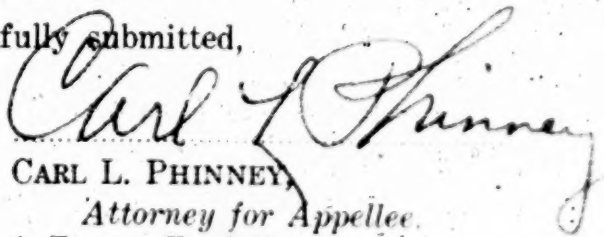
That Congress did not intend a strict construction of the agricultural exemption is further supported by the conditions imposed "if such motor vehicles are not used in carrying any other property or passengers for compensation." This is a clear expression that the transportation of agricultural commodities (not including manufactured products thereof) could be hauled by any person, firm or corporation, so long as such motor vehicles were not used

in carrying any other property or passengers for compensation. It is not necessary for the transportation to be performed by a farmer raising livestock and agricultural commodities when moving from farm to market. The exemption was placed in the Act to permit a free and unregulated flow of the items enumerated, including agricultural commodities.

CONCLUSION

Appellee respectfully prays this Honorable Court to affirm the decision of the Court below, enjoining the Interstate Commerce Commission from enforcing its cease and desist order against Appellee, Frozen Food Express when transporting fresh and frozen dressed poultry, if such motor vehicles are not used in carrying any other property or passengers for compensation.

Respectfully submitted,



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I, Carl L. Phinney, attorney for Frozen Food Express, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of February, 1956, I served copies of the foregoing Brief for Appellee on the several parties hereto as follows:

1. On the United States, by mailing a copy in a duly addressed envelope, with airmail postage prepaid, to James E. Kilday and Charles S. Sullivan, Jr., Esquires, Special Assistants to the Attorney General, U. S. Department of Justice, Washington 25, D. C.; Malcolm R. Wilkey, Esq., U. S. Attorney, Federal Building, Houston, Texas; and by mailing a copy in a duly addressed envelope with airmail postage prepaid to The Solicitor General, Department of Justice, Washington 25, D. C.

2. On the Interstate Commerce Commission by mailing a copy, in a duly addressed envelope with airmail postage prepaid, to Edward M. Reidy and Leo H. Pou, Esquires, at the offices of the Interstate Commerce Commission, Washington 25, D. C.

3. On the following attorneys of record of the intervening complainants, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Charles W. Bucey, and Walter D. Matson, Esquires, U. S. Department of Agriculture, Washington 25, D. C.

4. On the following attorneys of record for the intervening defendants, by mailing copies in duly addressed envelopes, with airmail postage prepaid, to Peter T. Beardsley and Fritz Kahn, Esquires, American Trucking Association, Inc., 1424 16th St. N. W., Washington 6, D. C.; to Rollo E. Kidwell, Esq., 305 Empire Bank Bldg., Dallas, Texas; Lee Reeder, Esq., 1012 Baltimore Avenue, Kansas City 5, Missouri; James W. Nisbet, 280 Union Station Building, Chicago 6, Illinois; Charles P. Reynolds, Esq., Shoreham Building, Washington 5, D. C.; Carl Helmetag, Esq., Pennsylvania Railroad, 1740 Suburban Station Building, Philadelphia, Pa.; Edwin N. Bell, Esq., Esperson Building, Houston, Texas; J. C. Hutcheson, III, Esq., Esperson Bldg., Houston, Texas; Clarence D. Todd and Dale C. Dillon, Esquires, 944 Washington Bldg., Washington 5, D. C.

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Nos. 162, 163, 164,

In the Supreme Court of the United States

OCTOBER TERM, 1955

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS, THE SECRETARY OF AGRICULTURE, ET AL.

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS, ET AL.

AKRON, CANTON & YOUNGSTOWN R. R. CO., ET AL.,
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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

**BRIEF FOR THE UNITED STATES AND THE SECRETARY
OF AGRICULTURE**

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OPINIONS BELOW

The opinion of the district court (R. 50-60) is reported at 128 F. Supp. 374. The report of the Interstate Commerce Commission (R. 38-48) appears in 62 M. C. C. 646.

In July 1954 the Commission filed a report in which it concluded that fresh and frozen meats and dressed poultry are not within the Section 203 (b) (6) exemption (R. 38-47). Following entry of an order prohibiting the transportation found to be unlawful (R. 47-48), Frozen Food brought the present suit to set aside the Commission's order (R. 1-6). The answer filed by the United States, a statutory defendant, supported Frozen Food's attack upon the order in so far as it applied to fresh and frozen meats and dressed poultry (R. 29-31), and the Secretary of Agriculture, who intervened as a party plaintiff,¹ alleged that the order was invalid in these respects (R. 33-37). The three complainants before the Commission, three associations of motor carriers, and certain Class I railroads intervened as parties defendant (R. 62, 68).

The district court unanimously held that fresh dressed poultry and frozen dressed poultry are "agricultural commodities", as these words are used in Section 203 (b) (6), and that the process-

¹ Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, 36, 7 U. S. C. 1291), authorizes the Secretary of Agriculture to "make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same", with all of the "rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination." Similar authority is also conferred on the Secretary by Section 203 (j) of the Agricultural Marketing Act of 1946 (60 Stat. 1087, 1988-1089, 7 U. S. C. 1622).

ing which they undergo does not make them "manufactured products thereof" (R. 57-59). The court also held, with one judge dissenting, that the exemption given by the section does not apply to fresh and frozen meats (R. 58-60),² but this determination has not been appealed.

The Commission's report set forth the steps taken when a chicken, duck or turkey is to be marketed as dressed poultry. While the grower sometimes does the killing and processing, poultry usually is shipped alive to a processing plant. It is there placed on an endless chain which carries it through the various stages of "killing, picking, pinning, singeing, cropping and venting, washing, chilling, eviscerating, packaging, and freezing." Picking is done both by machinery and by hand. Chilling involves submersion in tanks of ice water long enough to remove all body heat. In the eviscerating process the viscera are removed, and the liver, heart, and gizzard are cleaned and replaced in the carcass. After that, the poultry is wrapped and packed for shipment. Poultry which is to be frozen is placed in a refrigerated room in which the temperature is

² The court noted that Section 203 (b) (6) provides separate exemptions for "ordinary livestock" and "agricultural commodities"; that animals which constitute "ordinary livestock" are therefore not within the "agricultural commodities" exemption; and that animals which, when alive, are not "agricultural commodities" do not become such upon being slaughtered and severed into various cuts of beef or pork (R. 58-59):

maintained at minus 40° Fahrenheit, and, following quick-freezing, the birds are placed in cold storage until ready for shipment. (R. 42-43.)

It is the position of the Secretary of Agriculture, in which the United States joins, that the order of the Commission directing Frozen Food to cease transportation of fresh and frozen dressed poultry is invalid, and that the judgment of the district court setting aside this provision of the Commission's order should be affirmed.

SUMMARY OF ARGUMENT

Section 203. (b) (6) exempts from the motor-carrier requirements of the Act (other than those related to safety) motor vehicles used in carrying "agricultural commodities (not including manufactured products thereof)". Products of the farm, such as poultry, are "agricultural commodities" and remain such until converted into "manufactured" products. A chicken, after slaughter and removal of its feathers and entrails, remains a chicken, and it is bought and sold as such, not as a "manufactured" article.

A. The legislative history of the section shows that it was the clear intent of Congress that the exemption provided for agricultural commodities should include those which had been processed without making any real change in their identity or beneficial uses, and that products so processed should not be deemed within the parenthetical limitation, "not including manufactured products

7
thereof." The statutory provisions and legislative history also establish that the exemption granted motor vehicles carrying processed agricultural commodities applies whether the processing was on the farm or in a commercial plant, and whether the vehicles are farmer operated or commercially operated.

B. Section 203 (b) (6) uses the word "manufactured" in its ordinary sense and this word, as defined by this Court in decisions construing other statutes, means the creation of a new and different article having a distinctive name, character, and use from what it had before. Plainly, therefore, dressed poultry is not a "manufactured" product within the meaning of the section. Moreover, the Commission has ruled that milk, after pasteurizing, homogenizing, adding vitamin concentrates, standardizing, and bottling, is not a "manufactured" product excluded from the "agricultural" exemption, because such processing does not materially change its "basic character" or its original "beneficial uses". We submit that the processing which dressed poultry has undergone likewise does not materially change its character or its beneficial use—its value as an article of food. It is, therefore, like pasteurized milk, an exempted agricultural commodity.

C. The ruling made by the Commission in the present case does not conclusively determine that dressed poultry is not within the "agricultural" exemption. The weight to be given to an admin-

istrative determination depends upon the "thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Skidmore v. Swift & Co.*, 323 U. S. 134, 140. The Commission's ruling, so tested, is far from persuasive. It was grounded, not on the words of the statute or its legislative history, but on the Commission's concept of what it would have been "logical" for Congress to have provided. Furthermore, the Commission's view of what would be logical rests on the erroneous premise that the statutory provisions pertinent to the exemption of meats and those pertinent to exemption of dressed poultry are parallel. In addition, administrative interpretation provides, in this case, no reliable index to the meaning of the statute. In the Commission's occasional prior rulings on the application of Section 203 (b) (6) to dressed poultry, there has been no consistency in reasoning, but rather abandonment of one vulnerable position after another.

ARGUMENT

The exemption of motor vehicles used in carrying "agricultural commodities (not including manufactured products thereof)", given by Section 203 (b) (6) of the Interstate Commerce Act, covers vehicles used in carrying fresh or frozen dressed poultry

In the present appeals, the controlling question is whether dressed poultry is a "manufactured" product as that word is used in Section 203

(b) (6). Products of the farm, such as poultry, concededly are "agricultural commodities" within the exemption given by the section, and they remain such until converted into a "manufactured" product. The ruling of the Commission which is in issue is that poultry, upon being slaughtered, becomes a manufactured product. This is the necessary effect of the Commission's conclusion that poultry "other than that alive" is not an agricultural commodity within the meaning of the section (R. 13). The apparent theory is that conversion of a "live inedible fowl" into a "dead edible fowl" constitutes "manufacture." See *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, 546.

Chickens, ducks, turkeys, and other poultry do not change into something else upon being slaughtered. Neither do they change into something else when "dressed", that is, when the inedible feathers and viscera are removed. The birds alive have value as an article of food, and this is the value which they have, and the purpose for which they are purchased, after being plucked and cleaned. Dressed poultry is bought as a chicken, duck, or turkey, not as a different, much less a manufactured, product. "Surely the Thanksgiving turkey which the farmer's wife so carefully stuffs and places in the oven is not a manufactured article." Commissioner Lee concurring in part in the *Determination* case, 52 M. C. C. at 561-562.

We propose to show (1) that the legislative history of Section 203 (b) (6) establishes that processing of the kind and purpose involved in preparing poultry for marketing as dressed poultry does not make an agricultural commodity a "manufactured" product, excluded from the exemption granted by the section; (2) that such processing is not within the ordinary and accepted meaning of the word "manufactured", or within its meaning as Section 203 (b) (6) has been administratively construed; (3) and that the Commission's ruling that dressed poultry is not under the Section 203 (b) (6) exemption is not determinative, or even persuasive, of the scope and application of the section.

A. The legislative history of Section 203 (b) (6) establishes that farm products, processed merely to the extent of rendering them readily marketable, remain within the exemption given "agricultural commodities", and are not "manufactured" products excluded from such exemption

Congress passed the Motor Carrier Act, 1935, subjecting interstate motor-carrier operations to regulation, because the industry then was "unstable economically, dominated by ease of competitive entry and a fluid rate picture", in order to "preserve the motor transportation system from over²competition". *American Trucking Assns. v. United States*, 344 U. S. 298, 312-313. But Congress also intended that this regulation should not take from the farmers of the country the advantage of low-cost motor transportation. In the course of congressional consideration, Congress adopted or expanded exemptions from the

Act designed to benefit the agricultural economy, thereby progressively broadening the scope of these exemptions.

As passed by the Senate, the only pertinent exemption in the bill (S. 1629) which became the Motor Carrier Act was of "casual, occasional, or reciprocal transportation" of passengers or property by a person not engaged in motor transportation as a "regular occupation" (79 Cong. Rec. 5660, 5737).³ Senator Wheeler, who was in charge of the bill, stated that its purpose was "to exempt the operations of farmers and others who occasionally haul for hire" (*id.*, 5652).

This exemption was retained when the House Committee on Interstate and Foreign Commerce favorably reported the Senate bill with certain amendments, but the Committee added an exemption for "motor vehicles used exclusively in carrying livestock and unprocessed agricultural products" (79 Cong. Rec. 12,205, 12,219-20). In debate, doubt was expressed as to whether pasteurized milk and cream would be within this exemption (*id.*, 12,205), and pointed reference was made to the opposition by farmers to the proposed regulation (*id.*, 12,217).⁴ An amend-

³ The exemption was enacted as subparagraph (9) of Section 203 (b). 49 Stat. 546.

⁴ Mr. TRUAX. The ordinary farmer is opposed to the bill.

Mr. PIERCE. Absolutely, from beginning to end. This bill contains more dynamite for the Members on this side than anything we have had up this session. You put this over and put this bill into effect, and many Members will lose their seats on this very issue.

ment was then offered to strike out the words "unprocessed agricultural products" and substitute "agricultural commodities not including manufactured products thereof", with the explanation that the House Committee had not intended to exclude pasteurized milk or ginned cotton from the exemption, and therefore, "to meet the views of many Members", it proposed that only "manufactured products" be excluded from the exemption (*id.*, 12,220). It was also stated that under this language baled cotton and cotton seed "transported from the ginneries to the market or to a public warehouse would be exempt" (*ibid.*). Following such explanation, the exemption, which became subparagraph (6) of Section 203 (b), was adopted (*ibid.*).⁵ The Interstate Commerce Commission has recognized that this change significantly broadened the exemption given by the section. *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, 523.

The House, in addition to adopting this expanded "agricultural" exemption, provided for exemption of "motor vehicles controlled and operated by any farmer and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm" (79 Cong. Rec. 12,220). See 49 U. S. C. 303 (b)(4a).

⁵ A further amendment brought "fish, including shell fish", under the exemption (*ibid.*).

Before final passage of the bill by the House, the "agricultural" exemption was strengthened by making it "absolute rather than discretionary." As proposed by the House Committee, the Interstate Commerce Commission had power to nullify this exemption if the Commission at any time found that its application did not serve to effectuate the national transportation policy declared in Section 202 of the Act (79 Cong. Rec. 12,219-20, 12,225).⁶ After it had been stated that "it has never been the intention of anybody who has spoken here to give the Interstate Commerce Commission any discretion with respect to farm products" (*id.*, 12,225), the "agricultural" exemption was included among those granted in absolute terms (*id.*, 12,226).

The bill, as thus amended, was passed by both branches of Congress (79 Cong. Rec. 12,279, 12,460).

We submit that the following clearly appears from the various exemptions written into the Act, and from the intent of Congress with respect to the scope of the exemption conferred by Section 203 (b) (6) as shown by changes made in the ex-

⁶ As proposed by the House Committee, the Act's major regulatory provisions were not to apply to vehicles carrying agricultural commodities "unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202" (*id.*, 12,219-20).

exemption as originally proposed:⁷ (1) Such exemption applies to motor vehicles carrying agricultural commodities whether the vehicles are operated by farmers or commercial truckers.⁸ (2) It applies to such commodities after having been processed either on the farm or in a commercial plant. (3) It applies to motor transportation of a processed agricultural commodity where the processing, as in pasteurization of milk or ginning of cotton, has merely put it in a form in which it can obtain ready consumer acceptance. Congress thus tacitly recognized that the price which the farmer obtains for his product is affected by the cost of transporting it to consuming markets,

⁷ As to the significance of amendments to a bill, prior to its enactment, involving rejection of the original proposal, see *United States v. Pfitsch*, 256 U. S. 547, 551-552; *United States v. Great Northern Ry. Co.*, 287 U. S. 144, 155; Jones, *Extrinsic Aids in the Federal Courts*, 25 Iowa Law Rev. 737, 754 ("The alterations made in a bill during the course of its passage normally reflect a deliberate choice of the legislators as to the proper statutory direction."); Landis, *A Note on "Statutory Interpretation"*, 43 Harv. Law Rev. 886, 889 ("Successive drafts of the same act do not simply succeed each other as isolated phenomena, but the substitution of one for another necessarily involves an element of choice often leaving little doubt as to the reasons governing such a choice."). See also *Maneja v. Waialua Agricultural Co.*, 349 U. S. 254, 260.

⁸ The exemption given by subparagraph (4a) of Section 203 (b) completely covers farmer-controlled and farmer-operated vehicles when used in carrying "agricultural commodities and products thereof." Furthermore, pasteurized milk and cottonseed concededly are within the exemption given by Section 203 (b) (6), but pasteurizing is customarily done at dairies and farmers sell the bulk of their cottonseed to the ginner. *Determination case, supra*, pp. 523-524.

whether the product is transported in its raw state or after processing which puts it in a readily marketable form.

Congressional intent that the exemption given by Section 203 (b) (6) should have a broad scope is further shown by the later adoption of certain other amendments to the section designed to increase its coverage, and by failure to act upon various proposals to narrow its scope.

As it was enacted in 1935, Section 203 (b) (6) exempted motor vehicles "used exclusively" in carrying agricultural commodities. The Act of June 29, 1938, 52 Stat. 1237, struck out the word "exclusively", and added at the end of the exemption "if such motor vehicles are not used in carrying any other property, or passengers, for compensation."⁹ The Act of September 18, 1940, 54 Stat. 920, 921, inserted "ordinary" preceding "livestock", so as to make applicable the definition of "ordinary livestock" in Section 20 (11) of the Act (S. Rep. 433, 76th Cong. 1st Sess. p. 7).^{9a} The Act of July 9, 1952, 66 Stat. 479,

⁹ This change manifested the congressional purpose to exempt motor vehicles while carrying agricultural commodities even though at other times the same vehicles carried non-exempt commodities. *Interstate Commerce Commission v. Service Trucking Co., Inc.*, 186 F. 2d 400, 401-403 (C. A. 3); *Interstate Commerce Commission v. Dunn*, 166 F. 2d 116, 117-118 (C. A. 5).

^{9a} Section 20 (11) provides, *inter alia*: "The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses," 49 U. S. C. 20 (11).

changed the words "agricultural commodities" to "agricultural (including horticultural) commodities", in order to correct the Commission's ruling in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, 555, that nursery stock, flowers, and bulbs are not within the exemption.

On the other hand, the following proposals to narrow the "agricultural" exemption were presented to Congress but not acted upon: In 1940 the Interstate Commerce Commission proposed to Congress that Section 203 (b) (6) be amended so as to restrict the exemption to "the first movement from the point of production to the point of sale by the producer, or to the point of manufacture or transshipment."¹⁰ A bill introduced in 1943 would have limited the exemption to transportation "by the producers of such property or by private carriers of property by motor vehicle if not for compensation" (S. 1148, 78th Cong., 1st Sess.). A bill introduced in 1950 would have limited the exemption to "ordinary livestock, live poultry, and other agricultural

¹⁰ S. 2009, 76th Cong., 2d Sess. (See Hearings before the Subcommittee of the Senate Committee on Interstate and Foreign Commerce, pursuant to S. Res. 50, *Study of Domestic Land and Water Transportation*, 81st Cong., 2d Sess., p. 823.

In 1952 this same restriction was incorporated in a proposed substitute for a bill (S. 2357, 82d Cong., 2d Sess.) to amend Section 203 (b) (6). See Hearings before Senate Committee on Interstate and Foreign Commerce on Bills Relative to Domestic Land and Water Transportation, 82d Cong., 2d Sess., p. 372.

commodities (not including the products of slaughter, nor preserved, frozen, or manufactured products), and fish (including shellfish but not including preserved, frozen, processed or manufactured products)."¹¹

Appendix C of appellants' brief in No. 162 sets forth an excerpt from the "Progress Report" appearing in S. Rep. 1039, 82nd Cong., 1st Sess., but the views and conclusions incorporated in this report have not been endorsed by any congressional committee.¹²

B. Under the ordinary meaning of the word "manufactured", as it is used in Section 203 (b) (6), the processing incident to preparing poultry for sale as dressed poultry does not make it a "manufactured" product

The word "manufactured" is not used in Section 203 (b) (6) in a technical sense and it therefore must be given its common, ordinary meaning, and the Commission has so ruled (*Determination* case, *supra*, p. 517).¹³ Under that meaning as defined in decisions of this Court

¹¹ H. R. 7547, 81st Cong., 2d Sess. See Hearings pursuant to S. Res. 50, 81st Cong., 2d Sess., *supra*, p. 825.

¹² The report's "Foreword" states that the Senate Committee "has authorized with reservations the issuance of this progress report by Senator Bricker"; and that the conclusions and recommendations incorporated in the report "represent the views of the authors and have neither been approved nor disapproved by the Senate Committee on Interstate and Foreign Commerce."

¹³ In the absence of some contrary indication, it must be assumed that the words of a statute are used in their "ordinary meaning." *Jones v. Liberty Glass Co.*, 332 U. S. 524, 531.

construing other statutes, dressed poultry clearly is not a "manufactured" product.

Hartranft v. Wiegmann, 121 U. S. 609, held that shells whose outer layer had been removed by acid and a further layer by grinding by an emery wheel, and on some of which inscriptions had been etched, and which were to be sold as ornaments, came within the tariff classification of shells "not manufactured". This Court said that they "were still shells", that they had not been manufactured "into a new and different article; having a distinctive name, character or use from that of a shell", and that application of hand or mechanical labor to an article does not necessarily make it "manufactured", just as cleaning and ginning cotton "does not make the resulting cotton a manufacture of cotton." 121 U. S. 615.

In *Anheuser-Busch Brewing Assn. v. United States*, 207 U. S. 556, an importer of corks washed and steamed them to remove all impurities, bathed them in a solution to close all crevices and to prevent bottled beer from acquiring a cork taste, and used the corks for bottling exported beer. The Court held that these corks were not articles "manufactured" in the United States of imported materials, and that the importer was therefore not entitled to a drawback of the import duties which he had paid. The Court said (p. 562):

Manufacture implies a change, but every change is not manufacture, * * *. * * *
There must be transformation; a new and

different article must emerge, "having a distinctive name, character or use."

American Fruit Growers, Inc. v. Broder Co., 283 U. S. 1, involved the issue whether a product patent, claimed as to fresh citrus fruit the rind of which had been impregnated by a solution rendering the fruit resistant to decay, constituted discovery of a "manufacture". The court below had held that the product claimed was a combination of the natural fruit and the solution carried in its rind, and that such product "is not found in nature and is thus an article of manufacture." 283 U. S. 11. This Court, relying on the dictionary definition of "manufacture" and on the *Hartman* and *Anheuser-Busch* cases, reversed. It said that addition of the solution does not produce an article possessing "a new or distinctive form, quality, or property", and does not change the "name, appearance, or general character of the fruit", which remains a fresh orange "as theretofore". *Id.*, 11-12.

See also *United States v. Dudley*, 174 U. S. 670, 672-673; *United States v. Potts*, 5 Cranch 284, 286-287; *Interstate Commerce Commission v. Yeary Transfer Co., Inc.*, 202 F. 2d 151 (C. A. 6); *Prentice v. City of Richmond* (Appendix, *infra*, p. 31).

A dressed chicken is therefore not a "manufactured" product—it is the same in name, character, and use as when it was alive and defeathered. There is no greater change in the chicken than

there is between cotton growing in the patch and cotton ginned and baled, or between milk as taken from the cow and milk pasteurized, homogenized, enriched, and bottled. Yet under Section 203 (b) (6) ginned cotton and pasteurized milk are "agricultural commodities", not "manufactured products", as recognized by the Commission (*Determination* case, *supra*, p. 517, 523, 551) and as clearly established by the section's legislative history (*supra*, pp. 11-12).

The processing undergone by milk and cream without making it "manufactured" involves at least as great a change and is at least as commercial as the processing undergone by dressed poultry. Milk processing includes pasteurizing, homogenizing, adding vitamin concentrates, standardizing, and bottling. *Determination* case, *supra*, p. 549. Pasteurization is a process by which milk is heated to a sufficiently high temperature and for a sufficient time to kill the pathogenic organisms present in it (*ibid.*). Homogenization reduces the size of the fat globules in milk and cream, and this process, like pasteurization, is done mainly in dairies, very seldom on the farm (*id.*, p. 550). Standardization is the practice of combining cream and skim milk (obtained from whole milk) so that the milk's "percentage" (i. e., butter-fat content) meets the minimum requirements of state law (*ibid.*). Addition of vitamins, such as vitamin "D", increases com-

ponents already present in the milk and improves the milk somewhat (*ibid.*).

The Commission has ruled that milk which has been subjected to all of this processing is not a "manufactured" product within the meaning of the "agricultural" exemption. *Determination* case, *supra*, p. 551. Its conclusion was that such processing does not change the "basic character" of the milk "in any material respect", and that it continues to have "the same beneficial uses as theretofore" (*ibid.*). We submit that, by these same tests, removal of the feathers and entrails of poultry does not make it "manufactured."

In *Interstate Commerce Commission v. Allen E. Kroblin, Inc.*, 113 F. Supp. 599 (N. D. Iowa), the court held, after an exhaustive review of the legislative history of Section 203. (b) (6), that dressed poultry is not "manufactured" and that vehicles carrying it are therefore within the exemption given by the section. On appeal, this decision was affirmed (212 F. 2d 555 (C. A. 8)), and certiorari was denied (348 U. S. 836). The appellate court said, 212 F. 2d at 557:

And, within the realities of marketing and distributing poultry, the dressing thereof at the local market level would seem to be no more of a step in the disposing of it as poultry than would the pasteurizing of milk or the ginning of cotton in disposing of them as milk and cotton. * * * The position of the Commission in its naked effect—though not thus baldly phrased—is

simply that, as a matter of giving motor-carrier regulation, as full a scope as possible, a chicken should be regarded as being converted into a manufactured product whenever its head has been cut off. Neither the language nor the spirit of the agricultural exemption warrants us in adopting any such artificial concept * * *.

The position of the Commission respecting dressed poultry, maintained in the face of the adverse *Kroblin* case, is not unlike the position which it took in *Interstate Commerce Commission v. Love*, 77 F. Supp. 63 (E. D. La.), that the exemption of "fish" in Section 203 (b) (6) applies only to fish "as taken from the water" and therefore does not embrace fresh or frozen beheaded shrimp. The court, however, held that shrimp, packed in ice or frozen after removal of their heads, "continue to be shrimp in their natural state" and thus within the exemption conferred as to "fish". 77 F. Supp. 67. The court of appeals affirmed *per curiam*. 172 F. 2d 224.

Mitchell v. Myrtle Grove Packing Co., 350 U. S. 891, gives no support to appellants' contention that dressed poultry is a "manufactured" product. In that case this Court, "agreeing with the construction of the Fair Labor Standards Act given it by the Fourth Circuit Court of Appeals in *Tobin v. Blue Channel Corp.*, 198 F. 2d 245", reversed *per curiam*. The construction thus approved was that picking meat from the claws of crabs when this was "an essential and inte-

grated[,] step in the continuous and uninterrupted process of canning crabmeat" was "canning" within the purview of Section 13 (b) (4) of the Act, and not "processing (other than canning)" within the terms of Section 13 (a) (5). 198 F. 2d 248. This is a holding, not that picking meat from crab shells is canning, but that, under the applicable sections of the statute, the word "canning" embraces necessary and closely integrated preparatory operations.¹⁴

C. The Commission's ruling that dressed poultry is not within the exemption given by Section 203 (b) (6) is not determinative, or even persuasive, of the scope and application of the section

The Commission has never faced the real issue—whether poultry, upon being killed and dressed, becomes "manufactured". Its conclusion as to dressed poultry was based on the following reasoning: The products for which exemption is given include "ordinary livestock", and these words do not embrace meats resulting from slaughter of livestock. Since the exemption given as to cattle, sheep, swine, etc., when alive, does not extend to meats derived from their slaughter, it "logically follows" that the exemption which poultry has when alive does not extend to poultry when killed (R. 44-45).

We submit that this reasoning is circular. It might just as well be said that since poultry,

¹⁴ Legislative history expressly confirmed this interpretation, and it had the support of long standing, consistent administrative interpretation. See Government's brief in No. 44, October Term, 1955, pp. 13-14, 17-18.

whether alive or slaughtered, is within the Section 203 (b) (6) exemptions, it "logically follows" that livestock, whether on the hoof or after slaughter, is within these exemptions.

The Commission did not relate its conclusion to the words of the statute or to its legislative history. Its speculative deduction of congressional intent rests on the false premise that the statutory provisions pertinent to exemption of meats and those pertinent to exemption of dressed poultry are parallel. On the contrary, the exemption granted "agricultural commodities" includes processed commodities provided they are not "manufactured", but the "ordinary livestock" exemption, by its express terms, does not include processed livestock. This difference in the scope of the two exemptions is not to be ignored on the basis of what the Commission or the courts believe to be "logical".¹⁵

The Commission contends that its ruling should be upheld because an administrative agency's interpretation of a statute which it has the duty to enforce is entitled to "special consideration". The issue presented is the statutory authority of the Commission to forbid motor transportation

¹⁵ Possibly Congress believed it appropriate to distinguish between products which had been processed without effecting any substantial change in the products' original identity, as in the case of dressed poultry, pasteurized milk, ginned cotton, etc., and processed products where there was no such continuing substantial identity. Certainly a cut of fresh pork, a sirloin steak, or a lamb chop is not bought or sold as a pig, a steer, or a lamb.

of dressed poultry by an uncertificated carrier. Administrative practice and rulings "cannot narrow the scope of a statute when Congress plainly has intended otherwise" (*Neuberger v. Commissioner*, 311 U. S. 83, 89), and an administrative agency "may not finally decide the limits of its statutory power" (*Social Security Board v. Nierotko*; 327 U. S. 358, 369). In addition, the weight to be given to administrative interpretation depends upon "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control" (*Skidmore v. Swift & Co.*, 323 U. S. 134, 140).

By the tests suggested in the *Skidmore* case, the Commission rulings relied upon by the appellants in No. 162 are not persuasive. To the limited extent that the Commission has dealt with the application of Section 203 (b) (6) to dressed poultry, there has been no consistency in reasoning, but rather a shift from one vulnerable position to another.

We find no reported Commission rulings on the exempt status of transportation of dressed poultry prior to the *Kroblin* case, *supra*, other than the *Determination* case, *supra*, and certain rulings in *Monark Egg Corp. Contract Carrier Application*.¹⁶

¹⁶ The brief for appellants in No. 162 also cites (p. 37) *Battaglia Common Carrier Application*, 18 M. C. C. 167;

The first *Monark* report considered live poultry to be within the words "ordinary livestock", and ruled that dressed poultry was not an exempted commodity because not livestock. 26 M. C. C. 615, 618. The second *Monark* report rejected this view, and adopted the channel-of-commerce theory of the scope of the exemptions granted, that is, that transportation of farm products was exempted only "to the point where they first entered the channels of ordinary commerce", a theory which put dressed poultry outside the exemption. 44 M. C. C. 15, 18-19. This channel-of-commerce theory was, in turn, rejected in the third and fourth *Monark* reports (49 M. C. C. 693, 698; 52 M. C. C. 576, 581) and also in the *Determination* case (52 M. C. C. 511, 524). In the latter case, as in the instant case, the ruling was that, since meats are not an exempted commodity, it "logically follows" that dressed poul-

Allen Common Carrier Application, 28 M. C. C. 26; and *McCarty Contract Carrier Application*, 32 M. C. C. 615. In *Battaglia*, a recommended report and order by a joint board (see Sec. 205 (a) - (b) of the Act, 49 U. S. C. 305 (a) - (b)) automatically became effective because no exceptions thereto were filed. In the *Allen* and *McCarty* applications the applicants' operations included transportation of dressed poultry and the requested certificates of operating authority were granted. The Commission acted upon the basis—subsequently overturned (see n. 9, p. 15, *supra*)—that transportation of any non-exempt commodity "subjects all of his [the applicant's] for-hire motor-vehicle operations" to the certificate provisions of the Act. 28 M. C. C. 27. The Commission therefore did not have to determine, nor did it determine, whether Section 203 (b) (6) exempts transportation of dressed poultry.

try is not an exempted commodity. *Supra*, p. 23. And the Commission's position in the *Kroblin* case, which the Court of Appeals for the Eighth Circuit held to be erroneous, can hardly lend support to the order which is now in issue.

Congress, in exempting particular transportation from the Act's general regulatory provisions, did not authorize the Commission to determine the scope of exemption by balancing the need for effective regulation against the interests of those intended to be benefited by exemption. Moreover, the Commission's dressed-poultry ruling was put on purely legalistic grounds, not on the Commission's special knowledge of transportation problems.¹⁷

It is of some significance that nearly all of the judicial decisions dealing with Section 203 (b) (6) have held that the Commission has placed a too narrow interpretation on the scope of the exemptions given by this section. It was so held in the *Love* and *Kroblin* cases. See *supra*, pp. 21-22. In *Interstate Commerce Commission v. Yeary Transfer Co.*, 104 F. Supp. 245 (E. D. Ky.), affirmed, 202 F. 2d 151, the court held, contrary to the Commission's contention, that artifi-

¹⁷ The Commission, in effect, treated as irrelevant contrary scientific evidence. It affirmed its ruling in the *Determination* case, where the "scientist" testifying with respect to poultry had expressed the opinion that the processing, including freezing, by which poultry is prepared for marketing as dressed poultry, is not "manufacturing". 52 M. C. C. at 544.

cially redried tobacco is not a "manufactured" product. *Interstate Commerce Commission v. Wagner*, 112 F. Supp. 109 (M. D. Tenn.), rejected the Commission's contention that scoured wool, which had been washed through many vats of detergent, rolled in mechanical rollers and then dried, was manufactured and hence not an exempted commodity. *Florida Gladiolus Growers Assn. v. United States*, 106 F. Supp. 525 (S. D. Fla.), where the proceeding was instituted prior to the 1952 amendment adding the words "including horticultural", the court held, contrary to the Commission's ruling, that cut flowers are "agricultural commodities".¹⁸

Appellants rely to some extent upon the fact that the Commission's report refers to certain Government publications which include the dressing of poultry or dressed poultry under a general list of manufacturing industries or manufactured products (R. 43). Since the proof does not show, nor did the Commission consider, the criteria employed in making these general classifications, the lists provide no guidance in determining the meaning of the word "manufactured" as used by Congress in limiting the statutory exemption given to vehicles carrying agricultural commodities.

¹⁸ Other decisions holding that the Commission's interpretation of Section 203 (b) (6) had been too restrictive are *Interstate Commerce Commission v. Dunn*, 166 F. 2d 116 (C. A. 5) and *Interstate Commerce Commission v. Service Trucking Co.*, 186 F. 2d 400 (C. A. 3).

Cf. *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 74-75. The essential irrelevance of these listings is highlighted by the fact that in two of them both dressed poultry and milk "(Fluid Market)" are included under the heading "Food, Manufactured" (Ex. 13, R. 132; Ex. 15, R. 139).

We finally note that the appellants in Nos. 162, 163, and 164 do not urge that there is any distinction between fresh dressed poultry and frozen dressed poultry with respect to the application of Section 203 (b) (6). The *Love* case, *supra*, specifically held that the exemption for "fish" equally covers fresh fish and frozen fish. 77 F. Supp. 63, 68. And in the fourth report in the *Monark* application the full Commission reached the same conclusion, and stated that frozen fish "remain in their natural or fresh state", with the freezing merely arresting deterioration while the commodity remains under refrigeration. 52 M. C. C. 576, 580. For like reasons, fresh dressed poultry and frozen dressed poultry are in the same category for the purposes of the exemption conferred by Section 203 (b) (6).

CONCLUSION

For the foregoing reasons, the judgment of the district court which is attacked in the appeals taken in Nos. 162, 163, and 164 should be affirmed.

Respectfully submitted.

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APPENDIX

Excerpts from Opinion in *Prentice v. City of Richmond*, Decided by Virginia Supreme Court of Appeals January 16, 1956

* * * The sole issue is whether Prentice as a poultry processor was a "manufacturer" in the City during 1953 and therefore exempt from a wholesale merchants' license tax levied by the City for that year.

There is no conflict in the evidence. Prentice's business operation consists of the buying, killing, cleaning, chilling, and the sale and delivery of poultry to various wholesalers and jobbers. * * *

* * * * *

On arrival at the plant the live poultry is hung at nine inch intervals on a moving overhead conveyor which travels at the rate of 18 feet per minute. It is then hand-killed, dipped into a tank of hot water to loosen the feathers, and passed through a machine which removes all but the pin feathers, which are removed by hand. Further along the conveyor line the poultry is eviscerated and hand-cleaned, thoroughly washed and the edible parts reinserted in the carcass, which is then graded by weight and quality, sorted and chilled. Twenty-four carcasses come off the conveyor as dressed poultry each minute of working time, with the entire operation, exclusive of chilling, taking about 15 minutes. After chilling in crushed ice, 25 carcasses are placed in wooden containers lined

with waxed paper and iced further while awaiting sale.

In support of the contention that he is a manufacturer and therefore exempt from the City's wholesale license tax, Prentice argues forcefully for a quantitative definition of manufacturing, that is, the same operational undertaking is or is not manufacturing depending on the relative importance of mechanical devices or machinery used in the process of turning out a particular finished product. * * * The City argues on the other hand that Prentice has overstressed the quantitative element in manufacturing and underemphasized the qualitative factor of change or transformation of the original ingredient as required by the Virginia cases. * * *

* * * * *

The next case to come before this court involving the meaning of manufacturing for purposes of taxation was *Richmond v. Richmond Dairy Co.*, *supra* [156 Va. 63]. * * * After reviewing more than a dozen cases, the court held, speaking through Chief Justice Prentiss, that the business of buying fluid milk, pasteurizing and selling it as fluid milk and cream was not manufacturing. * * *

* * * * *

The most recent case to come before the court was *Commonwealth v. Meyer*, *supra* [180 Va. 466], which involved both a state and a city merchants' license tax. Meyer, a meat packer, was engaged in the business of purchasing hogs and cattle on the hoof, slaughtering and processing them and selling the meat products. In the course of this operation the carcasses of the hogs were

carved into hams, shoulders and middlings and what was left was made into sausage, lard, etc. The hams and shoulders were tenderized, salted, smoked and cured and after the expiration of about 10 days they were wrapped for sale with their weight noted on the package. The middlings were sliced into breakfast bacon and packaged for sale. The court considered but rejected the stricter Pennsylvania rule that meat packers are not manufacturers and held that Meyer's operation involved sufficient transformation of the original ingredients to meet the definition of manufacturing. In so holding, Justice Holt, later Chief Justice, reviewed the Virginia cases and noted that the *Morris* case [116 Va. 912] quoted with approval the definition of "manufacturer" and "seller" contained in the *Consumers' Brewing Co.* case [101 Va. 171]. Commenting on the process of pasteurization as applied to milk, cream and buttermilk in the *Richmond Dairy* case, the opinion points out that: "These articles are not changed. They taste the same, and they look the same." And in discussing *Engle v. Sohn, supra* [41 Ohio St. 691], where a pork packer was held to be a manufacturer, the court said: "By the use of divers instrumentalities the original substance, though not destroyed, was transformed into shapes which could scarcely be recognized." In concluding its opinion the court recognized that there must be a substantial change or transformation of the original article when it said:

A hog on the hoof put through plaintiffs' packing plant is no longer a hog. It comes out as hams, shoulders, middlings,

sausage, souse, chitterlings, and other articles of commerce fit for consumption. Its value is increased. The color of this ham is changed; its texture is changed; its taste is changed; putrefaction is prevented, and it may be kept wholesome for an indefinite time. * * * 180 Va., at page 473.

* * * * *

While we agree with Prentice that the elements of his quantitative definition of manufacturing should receive consideration in determining whether a particular processing operation constitutes manufacturing within the meaning of the tax ordinance, we are of the opinion that in his processing operation the necessary qualitative element of manufacturing is lacking. There is no change or transformation of the live poultry into an article or product of substantially different character; slaughtering poultry, picking and cleaning it does not constitute such change as is essential to manufacturing. It follows therefore that Prentice is not a manufacturer but a wholesale merchant subject to the City tax assessment.

JUN 17 1955

HAROLD B. WILLEY, Clerk

No. 163

In the Supreme Court of the United States

OCTOBER TERM, 1955

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

LEO H. POU,

Associate General Counsel,

Interstate Commerce Commission, Washington 25, D.C.

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STATEMENT AS TO JURISDICTION

The Interstate Commerce Commission, appellant, submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Texas is reported at 128 F. Supp. 374, and a copy is attached hereto as Appendix A. The final judgment of the District Court, dated February 25, 1955, is attached hereto as Appendix B. The decision of the Interstate Commerce Commission is reported at 62 M. C. C. 646.

BASIS OF JURISDICTION

This suit was brought by Frozen Food Express, a motor common carrier of property, to set aside and enjoin an order of the Interstate Commerce Commission entered under section 204 (c) of the Interstate Commerce Act, 49 U. S. C. 304 (c). The order directed Frozen Food Express to cease and desist from engaging in certain interstate operations and transportation unless and until duly authorized by the Commission. The judgment of the district court was entered on February 25, 1955, and notice of appeal was filed in that court by the Commission on April 20, 1955.

The jurisdiction of the Supreme Court to review the decision of the district court on direct appeal is conferred by 28 U. S. C. 1253 and 2101 (b), and is sustained by the following cases: *United States v. Pierce Auto Freight Lines*, 327 U. S. 515; *Interstate Commerce Commission v. Parker*, 326 U. S. 60; *American Trucking Assn. v. United States*, 344 U. S. 298; *United States v. Capital Transit Co.*, 338 U. S. 286.

STATUTES INVOLVED

The pertinent portions of Part II of the Interstate Commerce Act, 49 U. S. C. 301 et seq., are as follows:

Sec. 203 (b) (6), 49 U. S. C. 303 (b) (6):
Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees

and safety of operation or standards of equipment, shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish); *agricultural* (including horticultural) *commodities* (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *. [Emphasis added.]

Sec. 204 (c), 49 U. S. C. 394 (c): Upon complaint in writing to the Commission by any person, * * * the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this part, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. * * *

Sec. 206 (a), 49 U. S. C. 306 (a): * * * no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway * * * unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *

QUESTIONS PRESENTED

The questions presented by this appeal are as follows:

(1) Whether the district court, in deciding as a "mixed question of law and fact" that both fresh dressed poultry and frozen dressed poultry are "agricultural commodities" within the exemption of section 203 (b) (6) of the Interstate Commerce Act, and thereby completely disregarding the Commission's contrary findings based on substantial evidence, erroneously usurped the Commission's function and invaded its province as the fact finding body; and

(2) Whether, in setting aside and enjoining enforcement of the Commission's order insofar as it relates to fresh and frozen dressed poultry, the district court erroneously disregarded or acted contrary to the principle of judicial review prescribed by this Court to the effect that an order of the Commission must be sustained by a reviewing court if within the scope of a statute the Commission is authorized to administer and enforce and if based upon adequate findings supported by substantial evidence on the whole record.

STATEMENT OF THE CASE

The administrative proceeding which gave rise to the Commission order here involved was initiated by the filing with the Commission of a complaint by three motor common carriers, com-

petitors of Frozen Food Express, alleging that the latter was engaged in transporting in interstate commerce for compensation certain commodities, i. e., fresh and frozen meats, and fresh and frozen dressed poultry, to, from, and between points and places it was not authorized to serve.¹ Frozen Food Express admitted that it was performing the described transportation, but contended no operating authority therefor was required, relying upon the exemption provided by section 203 (b) (6) of the Interstate Commerce Act.

In lieu of a formal hearing, the parties stipulated the facts, including in considerable detail the facts as to the steps taken in converting livestock into "fresh and frozen meats" and converting live poultry into "fresh and frozen dressed poultry". Following submission of the matter on the stipulated facts and on briefs of the respective parties, the Commission made its report, finding that neither fresh meat nor frozen meat was "livestock" and that neither fresh nor frozen dressed poultry was an unmanufactured "agricultural commodity" within the exemption of section 203 (b) (6); consequently that in transporting the said commodities Frozen Food Express was

¹The record shows that Frozen Food Express holds certificates of public convenience and necessity issued by the Commission, authorizing it to transport the named commodities to, from, and between points in a number of States, but not those named in the complaint proceeding.

operating without authority and in violation of the Act.² The Commission thereupon issued the cease-and-desist order which is the order sought to be set aside in the suit brought by Frozen Food Express.

The district court, in an opinion which covered this and a companion suit by Frozen Food Express involving a different but closely related question,³ upheld the Commission's order insofar as it involves fresh and frozen meats, but set aside and enjoined enforcement of the order insofar as it relates to fresh and frozen dressed poultry. The court held as a matter of law that both types of dressed poultry are "agricultural commodities" and not "manufactured products thereof" within the meaning of section 203 (b) (6), and therefore that no operating authority is required in order for Frozen Food Express lawfully to transport them or either of them. It is from that holding by the district court that this appeal is taken.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

That part of the district court's opinion which deals with this case commences at page 379 of 128 F. Supp.; under the heading "Civil Action 8396". There, after disposing of a procedural

² Section 206 (a) of the Interstate Commerce Act, *supra*.

³ Appeals to this Court have been taken by Frozen Food Express, by the Commission, and by other parties, from the judgment entered in the companion suit.

question not involved in this appeal, the court stated that as to both fresh and frozen dressed poultry it agreed with the conclusion reached by the district judge in *Interstate Commerce Commission v. Kroblin*, 143 F. Supp. 599, aff'd., 212 F. 2d 555, cert. den., 348 U. S. 836,⁴ to the effect that dressed poultry is an "agricultural commodity" and not a "manufactured product thereof."

It should be noted at this point that the only commodity involved and passed upon in the *Kroblin* case was *fresh* dressed poultry. There was no showing that *Kroblin* was transporting *frozen* dressed poultry. The Texas court in the instant case, while purporting to follow the Iowa court in *Kroblin*, actually went beyond that court in holding that frozen as well as fresh dressed poultry was within the statutory exemption. It is obvious that, as to frozen dressed poultry, the *Kroblin* case was not and is not a precedent for the decision in the instant case; this for the reason that the freezing of many articles of food is generally recognized as a manufacturing process whereby the quality and nature of the

⁴The *Kroblin* decision is not necessarily controlling of the issue here involved, this Court having many times held that denial of a petition for certiorari imports nothing as to the merits of a lower court decision. *Griffin v. United States*, 336 U. S. 704, 716; *Sunal v. Large*, 332 U. S. 174, 181; *Brown v. Allen*, 344 U. S. 443, 456; *House v. Mayo*, 324 U. S. 42, 47, and cases there cited.

article is changed materially from that of its fresh, unfrozen state. That is to say, freezing (or "quick-freezing" as it is sometimes called) may constitute "manufacturing" even if the antecedent processing does not.

The real and substantial question, however, is whether the district court erred in holding that fresh and frozen dressed poultry are unmanufactured agricultural commodities, in complete disregard for the Commission's findings, based upon substantial, uncontradicted evidence, that both types of poultry have been so changed from their natural state as to acquire "new forms, qualities, properties, or combinations" (62 M. C. C., at p. 650), and therefore are not "agricultural commodities" within the meaning of section 203 (b) (6). The Commission's report (62 M. C. C., at 649-650) summarizes in detail the numerous steps taken and the methods involved in the factory-converting of live poultry into fresh and frozen⁵ dressed poultry, and also showing that the opinions of many experts on the subject, largely as indicated by official Government publications, were to the effect that the dressing of

⁵ As to the freezing, for example, the report (after describing the slaughtering and dressing processes) states: "The freezing of poultry must be accomplished as rapidly as possible and is generally done in a mechanically refrigerated room in which the temperature is maintained at minus 40° Fahrenheit and the air is circulated at speeds up to 70 miles an hour. After the birds have been frozen by this quick-freeze method, they are placed in cold storage until ready for shipment." 62 M. C. C., at p. 649.

poultry is and long has been classified and considered as manufacturing, and dressed poultry as a manufactured food or product.

As already stated, the district court completely disregarded the Commission's findings of fact, based upon substantial, undisputed evidence, and substituted therefor its own views, unsupported by evidence. This action was completely contrary to fundamental principles of judicial review long ago prescribed by the Supreme Court and consistently followed ever since. *Interstate Commerce Commission v. Union Pacific R. Co.*, 222 U. S. 541, 547; *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 139; *Universal Camera Corp. v. Labor Board*, 340 U. S. 474, 488.

If the decision of the district court in this case is permitted to stand, the function of the Commission as the fact finding, evidence-weighting body, in matters within the scope of its authority, will have been taken over by the district court. This Court's oft-repeated statement that "the findings of the Commission are made by law *prima facie* true [and this] Court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience" (*Illinois C. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441) will have become meaningless, at least as applied to the instant case, if the holding of the district court is not reversed.

If "there is a presumption that the Commission has properly performed its official duties, and this presumption supports its official acts" (Nor-

folk Southern B. Corp. v. United States, 96 F. Supp. 756, 761; *Federal Power Commission v. Hope Natural Gas Co.*, 320 U. S. 591, 602), the district court should not so lightly have cast aside the Commission's findings and conclusions and substituted itself as the fact-finding body. And even if the district court was correct in holding that the question to be decided was "a mixed one of law and fact, calling for the application of the processes of legal reasoning and of principles of statutory construction" (128 F. Supp., at 380), this Court has said, with respect to legal conclusions drawn by the Commission:

As conclusions of law, these do not have the same claim to finality as do the findings of fact made by the Commission. However, in the light of the Commission's long record of practical experience with this subject and its responsibility for administration and enforcement of this law, these conclusions are entitled to special consideration.⁶

For these reasons, therefore, the question presented by this appeal is of substantial importance to the Commission in the performance of the administrative and quasi-judicial duties imposed upon it by the Congress. In order properly to perform its duties the Commission needs to know the scope and extent of its authority to decide complaint cases of the type here involved. It needs to know whether such cases may be decided

⁶ *Levinson v. Spector Motor Co.*, 330 U. S. 649, 672.

de novo by reviewing courts, in complete disregard for its own findings and conclusions, as, we submit, was done by the district court in this instance.

The question presented by this appeal is substantial also from the standpoint of the public, particularly from the standpoint of motor and rail carriers subject to regulation by the Commission, and to shippers of the considered commodities. Numerous motor carriers, several motor carrier associations, and many railroads intervened in this suit in the district court, in support of the Commission's order, and they too have filed their appeals to the Supreme Court from the district court's decision. Their views on the questions involved, the extent of their several interests, and the disastrous results to them of the district court's holding, will doubtless be fully explained in their respective Statements as to Jurisdiction. We would point out, however, a few facts so well known as to require no proof.

One of these facts is that during the 20 years Federal regulation of interstate motor transportation has been in effect, the Commission has issued certificates and permits to hundreds of motor carriers, authorizing them to engage in the for-hire transportation of fresh and/or frozen dressed poultry in interstate commerce. The carriers so authorized have invested large sums of money in acquiring operating rights, special-type refrigerated trucks, and other special equipment

necessary for performing the described transportation. They have built up substantial and highly specialized businesses in this type of transportation, which differs in many respects from motor carrier service devoted to transportation of general freight. The value of the certificates held by these motor carriers will be greatly reduced, and the carriers' special-type vehicles and other equipment will be to a large extent rendered useless to them, if the decision of the district court is permitted to stand, to the effect that the transportation of both fresh and frozen dressed poultry is exempt from regulation.

Another and perhaps more serious factor worthy of consideration is that if this already large and constantly growing segment of interstate transportation should suddenly be freed from regulation, after having been regulated by the Commission for so long, the result would necessarily be "wild-cat" operations by truckers who do not carry the insurance which regulated motor carriers are required to maintain⁷ for the protection of shippers and the general public, as well as rate-cutting and every conceivable type of unfair and destructive competition, contrary to the National Transportation Policy declared by Congress.⁸ Such transportation by motor car-

⁷ Section 215 of the Interstate Commerce Act, 49 U. S. C. 315.

⁸ Preceding section 1 of the Interstate Commerce Act, 49 U. S. C. 1.

riers without being required to publish, file, and observe tariffs would disastrously affect rail carriers as well as regulated motor carriers. It is easy to see, also, how shippers of dressed poultry would suffer from de-regulation of this type of transportation, as they doubtless would receive less dependable and otherwise inferior service, at uncertain, and constantly changing, rate levels.

What has been said ~~above~~ as to the effect of the district court's decision in now removing the transportation of dressed poultry from regulation, after it has been so long regulated by the Commission, is reinforced by the well-known rule stated as follows in *Interstate Commerce Commission v. Weldon*, 90 F. Supp. 873, 877, aff'd, 188 F. 2d 367, cert. den., 342 U. S. 827:

The contemporaneous constructions placed upon the provisions of the Interstate Commerce Act by the Commission, which possesses special competence in this field, are entitled to great weight and respect and will not be overturned unless they are arbitrary or plainly erroneous. *New York, N. H. & Hartford R. R. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 402; *Brewster v. Gage, Collector of Int. Revenue*, 280 U. S. 327, 336.

The district court gave no effect whatsoever to this well-established rule of construction. It gave no weight to the Commission's interpretation of the statute, just as it ignored or gave no

credence to the Commission's findings. The decision was, therefore, directly in the face of the doctrine of administrative finality long ago prescribed and consistently followed by this Court.

CONCLUSION

It is earnestly submitted that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

LEO H. POU,
Associate General Counsel,
Interstate Commerce Commission.

APPENDIX A

In the District Court of the United States for the
Southern District of Texas, Houston Division

Civil Action No. 8285 and Civil Action No. 8396

FROZEN FOOD EXPRESS, PLAINTIFF, EZRA TAFT
BENSON, SECRETARY OF AGRICULTURE OF THE
UNITED STATES, INTERVENING PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COM-
MERCE COMMISSION, DEFENDANTS, COMMON CAR-
RIER IRREGULAR ROUTE CONFERENCE OF AMERI-
CAN TRUCKING ASSOCIATION, ET AL., INTERVENING
DEFENDANTS

JANUARY 26, 1955

Before HUTCHESON, *Chief Circuit Judge*, and
CONNALLY and KENNERLY, *District Judges*

CONNALLY, *District Judge*:

Filed pursuant to Secs. 1336, 1398, and 2321-
2325, of Title 28; to Sec. 1009, of Title 5; and to
Sec. 305 (g), of Title 49, U. S. C. A., each of the
foregoing civil actions attacks and seeks to re-
strain enforcement of an order of the Interstate
Commerce Commission. Presenting the same
question of law, and substantial identity of
parties, the actions were consolidated for hearing
and trial. The question for determination is
whether a number of different commodities, as

later noted herein, all of which have their origin on the farm or ranch, fall within the scope of the so-called agricultural exemption (Sec. 303 (b) (6)) of Part II of the Interstate Commerce Act. (Title 49, U. S. C. A., Sec. 301, et seq.). By terms of the last-mentioned statute, motor vehicles used in carrying property consisting of "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)", are exempt from Interstate Commerce Commission control (save for minor exceptions not here pertinent). The plaintiff in each of the consolidated actions, being a trucking concern holding a certificate of convenience and necessity from the Commission, desires to carry some or all of the commodities in question, unrestricted by the terms of its own certificate, or by other Commission regulation. Hence the plaintiff, supported to a considerable extent in this contention by the Secretary of Agriculture of the United States, urges upon the Court a broad interpretation of the statutory language "agricultural commodities (not including manufactured products thereof)", which would have the net result of enlarging this so-called agricultural exemption. The Commission, on the other hand, and those intervenors who align themselves with the Commission, urge upon us that most of the commodities in question, by virtue of the treatment and processing which they receive, either have lost their identity as "agricultural commodities", or have become "manufactured products thereof". The result of this argument is drastically to restrict the scope of the exemption.

Civil Action 8285

In June 1948, the Interstate Commerce Commission, of its own motion, instituted a proceeding, being MC-C-968 on its docket, in the nature of an investigation, to determine the meaning and scope of the term "agricultural commodities (not including manufactured products thereof)", as used in the above-mentioned statute. The proceeding was widely noticed in the affected trades and industries. Many interested parties, including the Secretary of Agriculture of the United States, the Commissioners of Agriculture from a number of the States, associations of shippers, motor carriers, and others, intervened. After extended hearings, during which much expert testimony was offered as to the manner and method of cleaning, preparing, packaging, and otherwise processing the various commodities in question, the Commission issued its report and order entitled "Determination of Exempted Agricultural Commodities" (52 I. C. C. Reports, Motor Carrier Cases, 511-566). In such report, the Commission announced its definition of such statutory term,¹ which definition it then undertook to apply to the

¹ "In No. MC-C-968, we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations."

various commodities under consideration, and enumerated those which it found to come within the statutory language, and those which it found to fall without.² Thereupon, the proceeding was terminated and removed from the Commission docket.

The plaintiff Frozen Food Express was not a party to the proceeding before the Commission.

² "We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) includes: (1) fruits, berries, and vegetables which remain in their natural state, including those packaged in bags or other containers, but excluding those placed in hermetically sealed containers, those frozen or quick frozen, and those shelled, sliced, shredded, or chopped up; (2) fruits, berries, and vegetables dried naturally or artificially; (3) seeds, including inoculated seeds, but not seeds prepared for condiment use or those which have been deawned, scarified or otherwise treated for seeding purposes; (4) forage, hay, straw, corn and sorghum fodder, corn cobs, and stover; (5) (a) hops and castor beans, and (b) leaf tobacco, but excluding redried tobacco leaf; (6) raw peanuts, and other nuts, unshelled; (7) whole grains, namely, wheat, rye, corn, rice, oats, barley and sorghum grain, not including dehulled rice and oats, or pearly barley; (8) (a) cotton in bales or in the seed, (b) cottonseed and flaxseed, and (c) ramie fiber, flax fiber, and hemp fiber; (9) live poultry, namely, chickens, turkeys, ducks, geese, and guineas; (10) milk, cream, and skim milk, including that which has been pasteurized, standardized milk, homogenized milk and cream, vitamin 'D' milk, and vitamin 'D' skim milk; (11) wool and mohair, excluding cleaned and scoured wool and mohair; (12) eggs, including oiled eggs, but excluding whole or shelled eggs, frozen or dried eggs, frozen or dried egg yolks, and frozen or dried egg albumin; (13) (a) trees which have been felled and those trimmed, cut to length, peeled or split, but not further processed, and (b) crude resin, maple sap, bark, leaves, Spanish moss, and greenery; (14) sugar cane, sugar beets, honey in the comb, and strained honey."

By amended complaint filed here July 12, 1954, plaintiff alleges that it desires to carry agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificate; that the report of April 13, 1951, deprives plaintiff of its right to do so. Alleging that the action of the Commission, in entering the report in question, was arbitrary, capricious and unreasonable, that it constituted an abuse of discretion and a violation of the Commission's statutory powers, the plaintiff here seeks an injunction to restrain the Commission and the United States from enforcing or recognizing the validity of such report; restraining interference with the plaintiff's proposed transportation of such agricultural commodities (not including manufactured products thereof), and seeks an order of this Court declaring the report of the Commission of April 13, 1951, to be null and void.

The Secretary of Agriculture has intervened, denominating himself "Intervening Plaintiff." He makes common cause with plaintiff in contending that a number of commodities are within the exemption. Several trucking associations, and some sixty southern and western railroad companies, have intervened. These interveners take

"(1) Slaughtered meat animals and fresh meats; (2) Dressed and cut-up poultry, fresh or frozen; (3) Feathers; (4) Raw shelled peanuts and raw shelled nuts; (5) Hay chopped up fine; (6) Cotton linters and cottonseed hulls; (7) Frozen cream, frozen skim milk, and frozen milk; (8) Seeds which have been deawned, scarified, or inoculated."

a contrary view, and support the report of the Interstate Commerce Commission.

We are of the opinion that the action may not be maintained, and must be dismissed, for the reason that the report and order of the Interstate Commerce Commission of April 13, 1951, is not an "order" subject to judicial review under any of the statutes cited. The proceeding before the Commission was not an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles R. R. Co.* (273 U. S. 284), holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unanimous Court there, aptly describes the order in issue here;

The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclu-

sions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation.

The proponents of jurisdiction here rely upon *Columbia Broadcasting System v. U. S.* (316 U. S. 407). It was there held that an order of the Federal Communications Commission promulgating certain rules and regulations requiring that the Commission deny a license to broadcasting stations under certain circumstances, was subject to judicial review, upon a showing by the complaining party of strong equitable considerations. This authority is clearly distinguishable from the present case. The order there in question was entered in the exercise of the agency's rule-making power. Such orders, together with those fixing rates and those determining controversies before the administrative body, have long been recognized as subject to review (*U. S. v. Los Angeles R. R. Co.*, *supra*).

Likewise, the complaining party there showed an immediate and continuing threat of irreparable injury if the order were not reviewed. It is not so here. The statement of plaintiff that it desires to carry for hire most or all of the commodities on the Commission's proscribed list, and that if it does so, the Commission likely will seek injunctive relief to restrain plaintiff, shows no basis for the intervention of a court of equity. Plaintiff will have an adequate remedy in the event of such interference.

It follows that Civil Action 8285 will be dismissed.

Civil Action 8396

A complaint was filed December 23, 1953, with the Interstate Commerce Commission by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., charging that Frozen Food Express was and has been engaged in transporting fresh and frozen dressed poultry, and fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food readily admitted that it had been so engaged; but defended on the theory that such products all were within the agricultural exemption. The Commission found each of these products not to be within the exemption, and ordered Frozen Food Express to cease and desist from such unauthorized transportation. The present proceeding was filed by Frozen Food Express to review that order.⁵

While the present action was pending in this Court, the Secretary of Agriculture of the United States filed with the Commission his petition for leave to intervene, pursuant to Sec. 1291, of Title 7, U. S. C. A. This request was denied; and the Secretary appears here as "Intervening Plaintiff," contending (1) that the proceedings before the Commission were null and void by reason of the failure of the Commission to notify him of the pendency thereof (Sec. 1291 (a), of Title 7, U. S. C. A.); (2) that the proceedings should be remanded to the Commission by reason of its

⁵ Plaintiff has abandoned the contention that meat products are within the agricultural exemption, and this commodity will not be further considered here.

error of law in having denied him leave to intervene; and (3) that the cease and desist order should be enjoined by reason of the alleged error of the Commission in holding fresh and frozen meats, and fresh and frozen dressed poultry, to be beyond the limits of the agricultural exemption.

The rail carriers and trucking associations which intervened in Civil Action 8285, also appear in this action. They support the Commission, and oppose the position taken by the plaintiff and the Secretary of Agriculture.

Armour & Company, being engaged at various points in the United States in the slaughter of livestock and the killing, dressing, and sale of poultry, has intervened, urging that dressed poultry is an exempt commodity, that meat is not.

The position taken by the Secretary of Agriculture that the proceeding before the Commission was null and void in its entirety by reason of the failure of the Commission to give him notice thereof, need not long detain us. The proceeding there was not one with respect to "rates, charges, tariffs, and practices" relating to the transportation of farm products, and hence was not one of which the Secretary was entitled to notice under the statute (Secs. 1291 and 1622, of Title 7, U. S. C. A.). *U. S. v. Pa. R. R. Co.* (242 U. S. 208); *B. & O. R. R. Co. v. U. S.* (277 U. S. 292); *Mo. Pac. R. R. Co. v. Norwood* (283 U. S. 249). The Commission likewise did not commit an error of law in denying the Secretary's Petition of Intervention, filed there while the present proceeding was pending here.

Most able and exhaustive treatment is given the question now before us, in so far as it concerns

dressed poultry, by Judge Graven of the United States District Court for the Northern District of Iowa, in *I. G. C. v. Kroblin* (113 F. Supp. 599, aff., 212 F. 2d 555, cert. den., Oct. 14, 1954). Reviewing the long struggle between the Interstate Commerce Commission in its efforts to restrict the application of the exemption in question, and the Department of Agriculture and others in seeking to expand it; reviewing the legislative history of the Motor Carrier Act of 1935, and various proposed amendments thereto; and considering the congressional intent which prompted the insertion of the agricultural exemption, Judge Graven concluded that dressed poultry constituted an "agricultural commodity," and did not constitute a "manufactured product thereof." Hence, such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry.

Counsel for the Commission urges that this Court should disregard the *Kroblin* case, on the argument that the only question before us is one of the adequacy of the evidence before the Commission. It is said that the order which was entered was one within the general purview of the Commission's authority, and that if its findings are supported by "substantial evidence," this Court has no alternative but to leave it undisturbed. While we do not quarrel with such statement as a general proposition of law, the argument is not convincing in its application to the present record. The primary facts before the Commission were without dispute and were the subject of stipulation. Reduced to simplest form,

they showed that before a chicken or duck became "dressed poultry", the bird was killed; his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc. In addition, such "facts" consisted of evidence of so-called "expert" nature, that this treatment or processing of the chicken or duck rendered him a "manufactured product."

It is apparent that there is only one ultimate finding called for, namely, whether under the type of processing reflected by the record, the product falls within the statutory definition. The question then is a mixed one of law and fact, calling for the application of the processes of legal reasoning and of principles of statutory construction. The fact that the Commission's findings are supported by an "expert" who gives his opinion that a dressed chicken is a manufactured product, does not foreclose the question, nor remove it from the scope of judicial review. *Baumgartner v. U. S.* (322 U. S. 665); *Lehmann v. Acheson* (206 F. 2d 592, 3C); *Galena Oaks Corp. v. Scofield* (— F. 2d —, 5C, Dec. 29, 1954, as yet unreported).

In our opinion, fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities", and hence is not within the exemption. Since the enactment of Part II of the Interstate Commerce Act in 1935, motor vehicles used exclusively in carrying "livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)", have been exempt. By amendment in 1940, the term "ordinary" was inserted immediately before the word "livestock".

The term "ordinary livestock" is defined in Sec. 20 (11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Referring only to the live animals, "ordinary livestock" may not be tortured to include the carcasses of slaughtered meat animals, or the meat which is the product of butchering. Meat has been regarded generally in the industry as a controlled commodity for some twenty years. Congress has dealt with the agricultural exemption on many occasions. Considering the ease with which the Congress might have added appropriate language to evidence its intent to exempt fresh or frozen meat from Interstate Commerce Commission control, if it so desired, the absence of such language indicates that no such intent was entertained.

Nor may meat, fresh or frozen, be considered an "agricultural commodity" for present purposes. The exemption has treated the live meat animal in a separate generic class from "agricultural commodity" since the enactment of the statute; and if the live animal, on entering the slaughter pen or the packing house, is not an "agricultural commodity", we are unable to see how he becomes one on emerging therefrom in the form of beef or pork. The Commission was correct, in our opinion, in holding fresh and frozen meat to be nonexempt.

The enforcement of the order of the Interstate Commerce Commission, MC-C-1605, *East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express*, is enjoined and restrained in so far as

said order interfered with, enjoins or restrains the plaintiff Frozen Food Express from transporting fresh and frozen dressed poultry in interstate commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation). Other relief sought by plaintiff is denied.

Clerk will notify counsel.

Done at Houston, Texas, this 26th day of January 1955.

(S) JOSEPH C. HUTCHESON, JR.,
Chief Judge, Fifth Circuit,

(S) BEN C. CONNALLY,
United States District Judge;

(S) THOMAS M. KENNERLY,
United States District Judge,

Concurring in Part and Dissenting in Part.

KENNERLY, *District Judge*: Concurring in part and dissenting in part.

I concur with all the foregoing opinion except the decision in Civil Action 8396 with respect to fresh meat and frozen meat. As to that I respectfully dissent.

I think all of Section 303 (b) should be given a broad and liberal construction, and that Section 303 (b) (6) should be construed as including fresh meat and frozen meat. I think we should not only follow the reasoning of both the District Court and Court of Appeals in the *Kroblin* case with respect to dressed poultry and frozen dressed poultry, but that what is said is also applicable to fresh meats and frozen meats.

(S) T. M. KENNERLY,

Judge.

APPENDIX B

In the United States District Court, Southern
District of Texas, Houston Division

Civil Action No. 8396

FROZEN FOOD EXPRESS, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, INTERSTATE COM-
MERCE COMMISSION, ET AL., DEFENDANTS

JUDGEMENT

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on November 16, 1954, before a duly constituted three-judge District Court; convened pursuant to Sections 2284 and 2321-2325, Title 28, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on January 26, 1955, filed herein its opinion, containing its findings of fact and conclusions of law; now, in accordance with the said opinion, findings, and conclusions, it is hereby ordered, adjudged, and decreed as follows:

(1) The defendants, the United States of America and the Interstate Commerce Commission, be, and they hereby are, enjoined and restrained from enforcing the order of the said Commission entered July 13, 1954, in a proceed-

ing docketed by the Commission as No. MC-C-1605, and entitled "East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express", insofar as the said order requires the said Frozen Food Express to cease and desist from transporting, or interferes with its transportation of, fresh and frozen dressed poultry in interstate commerce for compensation unless the motor vehicle used in the carrying of such poultry is at the same time being used to carry for compensation passengers or other property not within the exemption provided in section 203 (b) (6) of the Interstate Commerce Act (49 U. S. C. 303 (b) (6)); and

(2) All other relief sought by the plaintiffs herein, including the Secretary of Agriculture as intervening plaintiff, be, and the same hereby is, denied.

This the 23d day of February 1955.

(S) JOSEPH C. HUTCHESON, Jr.,

*Chief Judge, United States Court
of Appeals for the Fifth Circuit.*

(S) THOMAS M. KENNERLY,

United States District Judge.

(S) BEN C. CONNALLY,

United States District Judge.

Office - Supreme Court, U. S.

FILED

AUG 30 1955

HAROLD B. WILLEY, Clerk

No. 163

In the Supreme Court of the United States

OCTOBER TERM, 1955

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL., APPELLEES

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS**

**BRIEF OF INTERSTATE COMMERCE COMMISSION, AP-
PELLANT, IN OPPOSITION TO MOTION TO AFFIRM**

SAMUEL R. HOWELL,
Acting General Counsel.

LEO H. POU,
Associate General Counsel,
Interstate Commerce Commission.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 163

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL., APPELLEES

BRIEF OF INTERSTATE COMMERCE COMMISSION, APPELLANT, IN OPPOSITION TO MOTION TO AFFIRM

STATEMENT

The Motion to Affirm herein filed on behalf of the United States and the Secretary of Agriculture makes no attempt to answer the specific contentions of the appellants in Nos. 162, 163, and 164, that these appeals involve substantial questions and, therefore, that this Court should note jurisdiction. The questions urged as substantial are not even discussed in the Motion. Its authors disregard them or attempt to brush them aside with the statement that the appeals "present only the narrow question whether fresh and frozen dressed poultry constitute nonmanufactured agricultural products which are within the

agricultural exemption of section 203 (b) (6)" of the Interstate Commerce Act.

We submit that much more than that "narrow question" is involved in these appeals. From the standpoint of the Interstate Commerce Commission, as one of the appellants, perhaps the most important and most substantial question is one which relates to the Commission's authority and jurisdiction. That question is whether findings of fact made by the Commission on substantial evidence in a proceeding admittedly within the Commission's statutory jurisdiction may be completely disregarded and overturned by a reviewing court; together with the closely related question whether the Commission's long and consistent interpretation of a statutory provision it is required to administer and enforce is to be given no weight whatsoever by the reviewing court.

Other substantial questions were presented in the Statements as to Jurisdiction filed by the other appellants (motor carriers and motor carrier associations in No. 162, railroads in No. 164), and those questions were similarly ignored, certainly not answered, in the Motion to Affirm.

There is no necessity, and it would be improper, for us to repeat in this brief the argument set forth in the Commission's Statement as to Jurisdiction. There is little we can add to it, except

to reply briefly to the contentions made in the Motion to Affirm.

The legislative history of Section 203 (b) (6) does not support the appellees' position

One of the contentions made in the Motion is that the legislative history supports the district court's conclusion that fresh and frozen dressed poultry is within the agricultural exemption provided in the statute. With that contention the Commission does not agree.

We doubt if an exhaustive review of the legislative history of section 203 (b) (6) will disclose positively and certainly what the Congress had in mind as to where the line should be drawn between commodities within and commodities without the exemption. There were statements by individual Congressmen, to be sure, and they are sufficiently at variance to enable any party on either side of this litigation to pick and choose and thereby find support for his or its position. But the Congress itself, as distinguished from a few of its individual members, did not explain where it intended the line of demarcation to be drawn. It merely enacted the statute in the form and language we now have, and left its administration and enforcement to the Commission.

If any conclusion properly may be drawn from a review of the legislative history, it can go no

4

farther than that which the Commission stated in the so-called *Determination* case, 52 M. C. C. 511, 516:

The history of the legislation is not wholly clear as to the intent of Congress, except that *the partial exemption was to aid the farmer.* * * * (Emphasis added.)

Further on this question, the Commission's report in the *Determination* case recites (p. 516 of 52 M. C. C.):

The meaning of the term "unprocessed agricultural products" was the subject of considerable debate on the floor of the House and was explained in part by several members of the House Committee on Interstate and Foreign Commerce. For instance, one committee member stated that the term embraced "anything that has not been canned or manufactured or processed", and that it would include cream and milk. He further agreed that the term "includes all farm commodities produced upon any farm in the raw state ready for market", and stated that "on the whole, that is the way the Commission will interpret it and undoubtedly, the courts will give the same interpretation to it."

It is submitted, therefore, that if the legislative history of the exemption provision may be said to support either side in this controversy, it supports the view taken by the Commission

that the exemption should be so interpreted as to aid the farmer. The Commission has consistently interpreted the exemption with that purpose in mind, as indicated by its earlier decisions on the subject, some of which are reviewed in the *Determination* case.

Should this Court decline to take jurisdiction in this case, and thereby affirm without clarification or qualification the decision of the district court, hundreds of commercial truckers engaged in hauling both fresh and frozen dressed poultry on the public highways in interstate commerce would be freed from the regulation which the Commission has felt it was its statutory duty to impose upon them. Carriers of other products of agricultural commodities, such as quick-frozen fruits and vegetables, frozen citrus concentrates, canned fruits, and canned vegetables, would doubtless claim similar exemption from regulation. None of those so exempted would be subject to the operating authority requirements (sections 206 and 209 of the Act), the rate requirements (sections 217 and 218), or the requirements for insurance to protect the public (section 215). We earnestly submit that such results would not "benefit the farmer" in any remote sense, and that any such interpretation of the exemption provision is unjustified by such light as is available as to the legislative intent.

The Commission's interpretation of the section is justified and is sound

Congress in enacting section 203 (b) (6) having left its meaning unclear, and having imposed upon the Commission the duty to "administer, execute, and enforce all provisions of this part", 49 U. S. C. 304 (a) (6), the Commission, in order intelligently to perform that duty, proceeded first in the *Determination* case, *supra*, to interpret the language used in the exemption provision. After reviewing the legislative history, and many dictionary and judicial definitions of the words "manufacture" and "manufactured", the Commission (at p. 557 of 52 M. C. C.) interpreted the statutory language, "agricultural commodities (not including manufactured products thereof)", as meaning:

Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey),

but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations. (Emphasis added.)

The Commission's findings were binding on the district court

The Commission then, in the same *Determination* case, and with the just-quoted interpretation as its guide, weighed the evidence and made its findings as to a large number of commodities which had been the subject of testimony during the extended hearings in that case. On that evidence and under that interpretation of the statutory language it found (52 M. C. C. 547) that dressed poultry was not within the exemption provision. In the proceeding out of which the instant suit arose, and on evidence much more complete as to dressed poultry, the Commission again found that the statutory exemption "does not extend to vehicles used in carrying either * * * fresh or frozen dressed poultry" (62 M. C. C. 646, 651).

On this state of the record, the Commission having made its findings upon substantial evidence, in a matter admittedly within its statutory jurisdiction, we submit those findings should not have been completely disregarded, as they were, by the district court "unless all that has been established in administrative law concerning the limitation on judicial review is to be thrown overboard" (*Interstate Commerce Commission v. Jersey City*, 322 U. S. 503, 522).

The "findings of the Commission are made by law *prima facie* true. This Court has ascribed

to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Illinois C. R. Co. v. Interstate Commerce Commission*, 206 U. S. 441, 454.

An order of the Commission "does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity." *Interstate Commerce Commission v. Jersey City*, 322 U. S. 503, 512.

This Court has also said of the Commission's decisions on matters peculiarly within its province that "the judgment required is highly expert. Only where the error is patent may we say that the Commission transgressed." *United States v. Carolina Carriers Corp.*, 315 U. S. 475, 482.

Even if the question whether the exemption does or does not include fresh and frozen dressed poultry be a mixed question of law and fact, as the district court held it to be, p. 25 of Statement as to Jurisdiction in No. 163, the Commission's findings and conclusions were entitled to "special consideration" by the district court: *Levinson* case, *infra*. It appears to us they received no consideration whatever.

Levinson v. Spector Motor Service, 330 U. S. 649, involved the question as to where the line should be drawn between the Commission's power under section 204 of the Act to establish maxi-

imum hours of service of certain motor carrier employees, and, on the other hand, the authority of another Government agency under the Fair Labor Standards Act. The Commission had interpreted the Interstate Commerce Act as giving it authority over the subject matter. This Court had the following to say as to the Commission's decisions on such questions of law (pp. 672-673):

As conclusions of law, these do not have the same claim to finality as do the findings of fact made by the Commission. However, in the light of the Commission's long record of practical experience with this subject and its responsibility for the administration and enforcement of this law, these conclusions are entitled to special consideration. * * *

* * * We recognize the Interstate Commerce Commission as the agency charged with the administration and enforcement of the Motor Carrier Act. * * *. We see no reason to question its considered conclusion * * *.

And at p. 676 the Court said:

We have set forth the Commission's record of supervision over this field of safety of operation to demonstrate not only the extent to which the Commission serves Congress in safeguarding the public with respect to qualifications, maximum hours of service, safety of operation and equip-

ment of interstate motor carriers, but to demonstrate *the high degree of its competence in this specialized field which justifies reliance upon its findings, conclusions and recommendations.* (Emphasis added.)

It is submitted, therefore, that the Commission, not the reviewing court, is the tribunal in whose province it is to "draw the lines" in a case such as this; and that the lines as it drew them, between "agricultural commodities in their natural state" and "those which, as the result of treating or processing, have acquired new forms, qualities, properties, or combinations", were "drawn on rational considerations." *10 East 40th St. v. Callus*, 325 U. S. 578, 584.

The Commission having thus drawn the line between commodities within and those without the statutory exemption, and having on substantial evidence in the whole record found that neither fresh nor frozen dressed poultry was exempt, we submit that the district court's complete disregard for those findings and for the Commission's conclusion presents a very substantial question and one of public importance for consideration by this Court.

The Kroblin decision affords no basis for deciding this case.

The remaining proposition urged in the Motion to Affirm is that the *Kroblin* case, 113 F. Supp. 599, is dispositive of the question whether dressed

poultry is within the exemption of section 203 (b) (6) and that further review by this Court is unnecessary. But, as we pointed out in the Commission's Statement as to Jurisdiction, the *Kroblin* case did not involve frozen dressed poultry; furthermore, in that case the district court was the fact-finder, whereas in the instant (*Frozen Food*) case the facts were found by the Commission and, we submit, the district court was bound by the findings thus made. Hence the *Kroblin* decision affords no basis for this Court to grant the Motion to Affirm.

CONCLUSION

It is earnestly submitted, therefore, that this appeal presents substantial questions for review by this Court, questions which are of public importance; and that the Motion to Affirm should be denied and this Court should take jurisdiction and hear oral argument.

Respectfully submitted.

SAMUEL R. HOWELL,

Acting General Counsel.

LEO H. POU,

Associate General Counsel,

Interstate Commerce Commission.

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Nos. 162-164

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC. ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS ET AL.

No. 163

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL.

No. 164

AKRON, CANTON & YOUNGSTOWN RAILROAD
COMPANY, ET AL., APPELLANT

v.

FROZEN FOOD EXPRESS ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE INTERSTATE COMMERCE
COMMISSION

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General Counsel,

LEO H. FOU,

Associate General Counsel,

Interstate Commerce Commission,

Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 162

EAST TEXAS MOTOR FREIGHT LINES, INC., ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS ET AL.

No. 163

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL.

No. 164

AKRON, CANTON & YOUNGSTOWN R. R. Co., ET AL.,
APPELLANTS

v.

FROZEN FOOD EXPRESS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS

REPLY BRIEF FOR THE INTERSTATE COMMERCE
COMMISSION

We submit that the brief filed on behalf of the United States and the Department of Agriculture ignores controlling principles of statutory construction.

Section 203 (b) (6) of the Interstate Commerce Act exempts from motor carrier economic regulation "motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *." Admittedly, if the key words "agricultural (including horticultural) commodities (not including manufactured products thereof)" had a clear and precise meaning as used in this context, there would be no occasion to resort to rules of construction or to legislative history to ascertain the Congressional purpose. However, the lower Federal courts in this and similar cases and the parties in this case have recognized that the scope of Section 203 (b) (6) cannot be determined merely by reading it. We contend that when it is read with the rest of Part II of the Interstate Commerce Act (motor carriers) it supports the Commission's interpretation of the exemption as not including fresh and frozen dressed poultry. We also contend that Congress has ratified the Commission's interpretation, since, with express knowledge that the Commission was treating fresh and frozen dressed poultry as non-exempt commodities, it amended Section 203 (b) (6) in other respects and left undisturbed the status of dressed poultry.

I. The Controlling Principles of Statutory Construction

The exemption in Section 203 (b) (6) for vehicles used in carrying agricultural commodities “(not including manufactured products thereof)” cannot be interpreted in a vacuum; its intended scope can be determined only by reading it as part of a carefully integrated statute for the regulation of interstate motor carriers. In *United States v. American Trucking Ass'ns.*, 310 U. S. 534, an early case interpreting other provisions of the Motor Carrier Act of 1935 (now Part II of the Interstate Commerce Act), this Court repeated and applied this principle in the following words (at pp. 542, 544):

To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.

* * * * *

Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, “excepting as a different purpose is plainly shown.”

This Court has already applied the same principles in construing the agricultural commodity exemption of Section 203 (b) (6). In *American Trucking Ass'ns v. United States*, 344 U. S. 298, the Court sustained the power of the Commission to issue rules governing the interchange and leasing of motor vehicles. Looking to the purpose of those rules, the Court noted (at p. 312) that—

A fair analogy appears between the conditions which brought about the Motor Carrier Act and those sought to be corrected by the present rules, confirming our view of the Commission's jurisdiction. Then as now the industry was unstable economically, dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility.

Turning to the contention of the Secretary of Agriculture and others that the rules violated the exemption in Section 203 (b) (6) for vehicles carrying agricultural commodities, the Court pointed out (at p. 318) that—

Regulated truckers must also receive protection upon their restricted routes and limited carriage. A balance between these competing factors, carried out in accordance with congressional purpose, does not seem to us unreasonable or invalid.

We think it is clear, therefore, that the exemption provision of Section 203 (b) (6) must be interpreted, like the rest of the Act, in the light of the overall purposes of Congress.

As the Motor Carrier Act was originally enacted in 1935, Section 202 (a) sets forth the following statement of Congressional policy:

It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

As this Court summarized the pre-regulation situation, "the industry was unstable economically, dominated by ease of competitive entry and

a fluid rate picture." To cope with this problem, Congress established a system of common carrier certificates and contract carrier permits by which entry into interstate motor transportation was limited to the service required by the public convenience and necessity. Other provisions relating to rates and charges were designed to eliminate destructive pricing practices. It is obvious that to the extent that large segments of the trucking industry are exempted from such economic regulation, the broad Congressional purpose of providing stability for the industry may be thwarted. Thus, it is not enough to recognize that the exemption in Section 203 (b) (6) was intended to benefit farmers. Rather, the question is how far did Congress intend to go in carving out an exception from the general regulatory pattern. Stated otherwise, where did Congress strike a balance between a stabilized motor carrier industry and the interests of farmers?

The general principles of statutory construction just referred to must defer to any specific evidence of Congressional purpose as to the scope of Section 203 (b) (6). We concede that there is in the legislative history some evidence of legislative purpose which is inconsistent with any bare theory of strict construction of that subsection. We contend, however, that the Commission has given full effect to every indication of Congressional purpose.

As pointed out in the brief of the United States and the Department of Agriculture, Section 203 (b) (6) originated in an amendment to the original motor carrier bill (S. 1629) by the House Committee on Interstate and Foreign Commerce which added an exemption for "motor vehicles used exclusively in carrying livestock and unprocessed agricultural products." After it was pointed out in the House debate that pasteurized milk and ginned cotton might not be included in the exemption as thus phrased, an amendment was adopted to delete the words "unprocessed agricultural products" and to substitute "agricultural commodities not including manufactured products thereof."

In its *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511, the Commission reviewed this original legislative history, and concluded that—"It is thus apparent that the Congress intended the exemption to extend to commodities produced by the farmer in the natural state and to a limited extent those further treated or processed. In the absence of any declaration by Congress, as to what other commodities were to be embraced within the term, it is necessary to look to other sources." (Nos. 158-161, R. 38.) Also, in the *Determination* case, the Commission considered judicial and dictionary definitions of "agricultural" and "manufactured", together with extensive testimony as to

the various treatments and⁶ processes to which farm products are subjected. Finally, the Commission concluded that "the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by ~~tillage and~~ cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations." (Nos. 158-161, R. 88-89.)

Applying this test to dressed poultry, the Commission concluded that the various processes by which live poultry becomes dressed poultry gave to poultry "new forms, qualities, or properties," in the same way that fresh meat resulting from the slaughter of livestock is no longer an agricultural commodity.

In the instant *Complaint* case, the Commission reiterated its view that fresh and frozen dressed poultry is not an exempted agricultural commodity under Section 203 (b) (6). In both the *Determination* and *Complaint* cases, the Commission had before it, and in the *Complaint* case relied upon various government publications which indicated that the dressing of poultry is gener-

ally regarded as a manufacturing activity, rather than an agricultural activity. These exhibits are generally summarized in our main brief at pages 39-41. We think it clear that where Congress has not fully defined such broad terms as "agricultural" and "manufactured", it is proper to consider the meaning of those words in business and governmental usage. However, it is contended in the brief of the United States and the Department of Agriculture (pp. 28-29) that "Since the proof does not show, nor did the Commission consider, the criteria employed in making these general classifications, the lists provide no guidance in determining the meaning of the word 'manufactured' as used by Congress in limiting the statutory exemption given to vehicles carrying agricultural commodities." However, during the hearing before the Commission in the *Determination* case, the Department of Agriculture introduced in evidence Exhibit 45, "Standard Industrial Classification Manual, Volume I, Manufacturing Industries", issued by the Executive Office of the President in 1945. This manual classifies as "manufacturing"—

Poultry and small game dressing and packing, wholesale /

Establishments primarily engaged in killing, dressing, packing, and canning poultry, rabbits, and other small game for the trade. Important products of this in-

dustry include dressed and packed poultry (chickens, turkeys, ducks, and geese); canned poultry (whole and parts); potted and deviled chicken; dressed rabbits and dressed hares.

In its brief before the Commission in the *Determination* case, the Department of Agriculture stated that "we do submit that the classifications made [in the Standard Industrial Classification Manual] are helpful guides in resolving the issues now before the Commission."¹ We submit that the Department cannot now object to the Commission's giving appropriate weight to materials of the type which the Department urged upon the Commission as "helpful guides".

II. Congress Has Ratified the Commission's Treatment of Dressed Poultry

The brief of the United States and the Department of Agriculture (pp. 16-17) emphasizes that since 1935 Congress has failed to act upon various proposals to narrow the agricultural commodity exemption of Section 203 (b) (6), and that one of these proposals was sponsored by the Commission. Indeed, this negative legislative history was relied upon heavily by the District Court in *I. C. C. v. Allen E. Kroblin, Inc.*, 113 F.

¹ The pertinent portion of the argument of the Department of Agriculture in its brief before the Commission is set forth in the Appendix to this brief.

Supp. 699 (N. D. Iowa),² in holding that dressed poultry was within the exemption of Section 203 (b) (6). As noted in our main brief, this Court recently has declared that "we will not draw the inference * * * that an agency admits that it is acting upon a wrong construction by seeking ratification from Congress." *Wong Yang Sung v. McGrath*, 339 U. S. 33, 47.

In any event, the most significant feature of the post-enactment history of this question in Congress is that Congress, with express knowledge that the Commission had interpreted the agricultural commodity exemption as not including dressed poultry, amended Section 203 (b) (6) in other respects but took no step to reverse the Commission's action with respect to dressed poultry.

As early as May 1949, the Commission (Division 5) had held publicly that dressed poultry was not an exempt agricultural commodity under Section 203 (b) (6). *Frank Battaglia Common Carrier Application*, 18 M. C. C. 167.³ In 1950,

² Affirmed, 212 F. 2d 555 (C. A. 8); certiorari denied, 348 U. S. 836.

³ See also *Monark Egg Corp. Contract Carrier Application*, 26 M. C. C. 615 (1940); same case, second report, 44 M. C. C. 15 (1944); *Allen Common Carrier Application*, 28 M. C. C. 26 (1941); *McCarty Common Carrier Application*, 32 M. C. C. 615 (1942); *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951); *East Texas Motor Freight Lines v. Frozen Food Express*, 62 M. C. C. 646 (1954).

a subcommittee of the Senate Committee on Interstate and Foreign Commerce held extensive hearings pursuant to Senate Resolution 50, entitled *Study of Domestic Land and Water Transportation*. During the course of these hearings, counsel for the Refrigerated Carriers Association informed the Subcommittee (at p. 802) that—

the Commission or its staff has held that the following commodities, among others, are “manufactured”: *dressed poultry* (killed and picked), frozen fruits and vegetables, powdered and condensed milk, frozen egg mixtures, cheese, butter, canned fruits and vegetables, heated and bottled honey, shelled peanuts, cottonseed meal and hulls, clean rice, redried leaf tobacco, artificially dried fruits and vegetables, cottage cheese and cream cheese, rolled barley, ground or roasted coffee, gold-pack fruits, brined vegetables, and pasteurized milk. [Emphasis supplied.]

In 1952, during hearings before the full Senate Committee (also entitled *Domestic Land and Water Transportation*), a representative of the Department of Agriculture complained of the Commission's construction of Section 203 (b) (6) in the following terms (at p. 442):

In this connection it is noted that the substitute bill would specifically add nursery stock to the list of exempt commodities. We think the Commission was unduly severe in its interpretation of section 203

(b)(6) and that the exemption should properly be interpreted as covering such commodities as gladiolus bulbs, raw shelled peanuts, redried tobacco, *dressed poultry*, frozen milk, and other frozen foods. [Emphasis supplied.]

During the same 1952 hearings, the Commission brought to the attention of the Committee its decision in *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511.

It will be noted that the above-quoted statement of the Department of Agriculture refers to the fact that a substitute bill would add nursery stock to the commodities exempted by Section 203 (b) (6). This statement reflects the circumstance that the Commission had held that nursery stock was not an exempted agricultural commodity under Section 203 (b) (6), and that the Committee was specifically informed of the Commission's holding. (1952 Hearings, pp. 422, 426-431.)

Thus, it is clear that as a result of the 1950 and 1952 hearings, Congress was specifically informed that the Commission had interpreted the exemption in Section 203 (b) (6) as not including dressed poultry or nursery stock. With this knowledge, Congress in 1952 amended Section 203 (b) (6) to insert after the word "agricultural" the words "(including horticultural)." The specific purpose of this amendment was to overrule or reverse the Commission's view that

nursery stock was not an exempt commodity under Section 203 (b) (6). (House Rep. 2175, 82d Cong., 2d Sess.). But with equally specific knowledge that the Commission had held that dressed poultry was not exempt under Section 203 (b) (6), Congress took no action to reverse that holding of the Commission.

In brief, Congress, with knowledge of the issue, declined to avail itself of a convenient opportunity to override the Commission's view that dressed poultry was not an exempted agricultural commodity. This is highly persuasive evidence that the Commission has correctly interpreted the will of Congress. *United States v. American Trucking Associations*, 310 U. S. 534, 549-550; *Costanzo v. Tillinghast*, 287 U. S. 341, 345. Stated otherwise, Congress has already rejected the contentions of the United States and the Department of Agriculture with respect to dressed poultry.

Respectfully submitted,

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LEO H. POU,
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Washington 25, D. C.

APPENDIX

The brief of the Secretary of Agriculture which was filed with the Commission on Docket No. MC-C-968, *Determination of Exempted Agricultural Commodities*, contains the following at pages 165-166:

5. AGRICULTURAL COMMODITIES AS DISTINGUISHED FROM MANUFACTURED PRODUCTS IN THE STANDARD INDUSTRIAL CLASSIFICATION MANUAL

In order that the Commission might have the benefit of a classification of manufacturing and nonmanufacturing industries adopted by various agencies of the Federal Government, the Department of Agriculture presented Exhibits C-45 and C-46, through Witness Leavens. These exhibits consisting of the two volumes of the Standard Industrial Classification Manual, are official publications of the Bureau of the Budget in the compilation of which the Treasury Department, Social Security Board, Tariff Commission, Securities and Exchange Commission, Bureau of Labor Statistics, Bureau of the Census, Bureau of Foreign and Domestic Commerce, Bureau of Internal Revenue, Federal Reserve System, Bureau of Agricultural Economics, and the Interstate Commerce Commission participated. The classifications are intended as an aid in securing uniformity in the presentation of statistical data collected by various agencies of the Federal

Government, State agencies, trade associations, and private research agencies and are used by private research agencies and numerous of the above-mentioned Federal agencies, including the Interstate Commerce Commission.

Manufacturing establishments, as defined in the classifications, are:

Those establishments engaged in the mechanical or chemical transformation of inorganic or organic substances into new products and usually described as plants, factories, or mills, which characteristically use power-driven machines and materials-handling equipment. Establishments engaged in assembling component parts of manufactured products are also considered manufacturing if the new product is neither a structure nor other fixed improvement.

All other establishments are listed as non-manufacturing establishments. The following statement appears with respect to the status of so-called wholesale and retail trades engaged in the preparation and marketing of agricultural commodities:

Establishments engaged in the following types of operation are not included in the manufacturing division: Assembling, grading, and preparing fruits and vegetables for the market; pasteurizing and bottling milk; shelling and roasting nuts; cleaning, shucking, and packing fresh clams, oysters, and similar sea foods. Retail stores producing some or all of the products sold on the premises are not included in the manufacturing division.

While we do not contend that the classifications made in the Standard Industrial Classification Manual are necessarily binding upon the Commission in the present proceeding, we do submit that the classifications made therein are helpful guides in resolving the issues now before the Commission. The Manual was designed for the purpose of achieving substantial uniformity within the Federal agencies and is widely used by them.

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IN THE

United States District Court,

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Case No. 8396.

FROZEN FOOD EXPRESS, et al.,

Plaintiff,

**UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, et al.,**

Defendants.

STATEMENT OF JURISDICTION OF THE CLASS I RAILROADS, INTERVENING DEFENDANTS.

MARGARET P. ALLEN,
EDWIN N. BELL,
JOSEPH H. HAYS,
CARL HELMETAG, JR.,
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CHARLES P. REYNOLDS,

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Filed: June 17, 1955

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IN THE
United States District Court
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

—
Civil Case No. 8396.
—

FROZEN FOOD EXPRESS, ET AL.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

INTERSTATE COMMERCE COMMISSION, ET AL.,

Defendants.

—
In compliance with Rule 13, paragraph 2, of the Revised Rules of the Supreme Court of the United States, the Appellant Class I Railroads (intervening defendants in the above-styled action), hereinafter referred to as Railroads, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court of three judges entered in this cause. A list of the individual defendant railroads is attached hereto as Appendix A.

OPINION BELOW

The opinion of the United States District Court for the Southern District of Texas, Houston Division, has not yet been reported. Copies of the opinion and final judgment are attached hereto as Appendix B-1 and B-2, respectively.

JURISDICTION**(1)**

This proceeding was instituted to enjoin and set aside certain orders of the Interstate Commerce Commission, pursuant to the requirements of 5 U. S. C. A. § 1009, 28 U. S. C. A. §§ 1336, 1398, 2321-2325 and 49 U. S. C. A. § 305(g). The cause was heard by a District Court of the three judges in accordance with the requirement of 28 U. S. C. A. § 2325.

(2)

The Court below enjoined and restrained the Interstate Commerce Commission from enforcing its order in *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, Docket No. MC-C-1605 (July 13, 1954), insofar as it interferes with or restrains the transportation by Frozen Food Express of fresh and frozen poultry in interstate commerce in vehicles not used for carrying any other persons or property for compensation. Similar relief sought by plaintiff in respect to fresh and frozen meat was denied. A Notice of Appeal was filed in the United States District Court for the Southern District of Texas, Houston Division, on April 19, 1955, from that portion of this judgment which restrains the Commission from enforcing its order in *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, in respect to the transportation by Frozen Food Express of fresh and frozen dressed poultry.

(3)

Jurisdiction of a direct appeal from the judgment of a three-judge district court is vested in the Supreme Court by Statute. 28 U. S. C. A. §§ 1253 and 2101(b).

(4)

Such jurisdiction of the Supreme Court is also established by cases such as *United States v. B. & O. R. Co.*, 333 U. S. 169 (1948) and *I. C. C. v. Hoboken R. Co.*, 320 U. S. 368 (1943).

QUESTIONS RAISED ON APPEAL

Whether the district court was in error in holding that fresh and frozen dressed poultry are "agricultural commodities" and not "manufactured products thereof" within the meaning of Section 203(b)(6) of the Interstate Commerce Act (49 U. S. C. A. 303(b)(6))?

Whether the district court, in enjoining enforcement and setting aside so much of the Commission's Order relates to fresh and frozen dressed poultry, was in error failing to give adequate weight to the interpretation given by the Interstate Commerce Commission to Section 203(b)(6) of Part II of the Interstate Commerce Act in view of the fact that the Commission has been given extensive responsibilities by the Congress of the United States of America in the interpretation and administration of the Act so as to promote sound conditions in transportation in conformity with the objectives of the National Transportation Policy?

STATEMENT OF CASE

This proceeding had its inception in a complaint which was filed with the Interstate Commerce Commission by three motor common carriers against Frozen Food Express alleging that the defendant was engaging in the transportation of fresh and frozen meat and fresh and frozen dressed poultry between points not authorized by any certificate held by it. The complaint asked that defendant be ordered to desist from such unlawful operation. Defendant, Frozen Food Express, defended on the ground that the transportation of the commodities complained of came within the agricultural exemption.

After considering the case upon stipulated facts, the Commission concluded, in a proceeding entitled *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, Docket No. MC-C-1605 (July 13, 1954), that none of these commodities was within the exemption of Section 203(b)(6) (covering ordinary livestock and agricultural commodities) and entered an Order requiring Frozen Food Express to cease and desist from the unauthorized transportation thereof. Frozen Food Express filed a complaint in the District Court asking that the Commission be enjoined from enforcing the above Order. The Secretary of Agriculture intervened as a plaintiff. Numerous rail carriers and trucking associations and Armour & Company intervened as defendants in support of the Order of the Commission.

The District Court held that fresh and frozen dressed poultry came within the terms of the agricultural exemption and enjoined the Commission from enforcing so much of its order in Docket No. MC-C-1605 as relates to plaintiff's transportation of these commodities. The Court upheld the Commission's finding that fresh and frozen meat are not exempt and denied relief from the Commission's Order in respect to these commodities. This appeal is taken from so much of the Court's Order as enjoins the Commission from enforcing its Order in respect to the transportation by plaintiff of fresh and frozen dressed poultry.

THE SUBSTANTIALITY OF THE QUESTIONS

The issue in this case involves the interpretation to be placed on Section 203(b)(6) of the Act, particularly with respect to fresh and frozen dressed poultry. But to properly understand the importance of the issue in this matter, it ought to be considered along with the issues in the companion case No. 8285. It is, therefore, respectfully requested that the Jurisdictional Statements in these two very closely related matters be considered together. As a matter of fact, this case grows out of an attempt by the Commission to implement the determinations made by it which are involved in Case No. 8285. Because of this and the substantial identity of the parties, the cases were consolidated and heard on a single record in the court below.

Section 203(b)(6), often referred to in proceedings before the Commission and elsewhere as the "agricultural exemption" exempts from the economic regulatory powers of the Interstate Commerce Commission:

" . . . (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish) or *agricultural commodities (not including manufactured products thereof)*, if such vehicles are not used in carrying any other property, . . . for compensation." (Emphasis supplied.)

As indicated before, the Court below in Case No. 8396 held, despite the fact that fresh and frozen dressed poultry are subjected to an intensive processing carried on in most instances in large off-the-farm industrial plants, that those items, contrary to the finding of the Interstate Commerce Commission, are agricultural products within the meaning of that term as used in Section 203(b)(6) of the Act. Because of this decision it follows—unless this Court reverses the Court below—that the transportation of those items by

the appellee, Frozen Food Express, is totally beyond the economic regulatory powers of the Commission. The issue, as here presented, is directly concerned only with the transportation activities of one motor carrier. However, from a practical standpoint, this issue arises in respect to all carriers claiming an exempt status and, as thus magnified, takes on an importance that extends far beyond the immediate problem of whether or not Frozen Food Express can transport fresh and frozen dressed poultry free from regulation by the Commission.

The problem of the exempt carrier, which today is threatening the effectiveness of the entire regulatory scheme, is one which has created manifold difficulties, inconveniences and trouble for the subjects of regulation, including the motor carriers and the railroads, and for the shippers and receivers of vast quantities of commodities which regularly move in the stream of commerce of this nation.

This problem has its genesis in the language used by Congress in stating the agricultural exemption. It is immediately apparent in examining the language of Section 203(b)(6) of the Act that Congress has used very broad and general language in describing the types of commodities having a farm origin which, when moving in for-hire transportation, are free of regulation and those which are subject to regulation. Assuming that Congress had a sound basis for exempting for-hire transportation of farm produce and other things grown on the farm, in order to permit the farmer who owned a truck to share its use with other farmers and thus reduce their marketing costs, nevertheless, the language of Section 203(b)(6) indicates that this objective was not intended to interfere with for-hire transportation handling manufactured or processed agricultural items. The legislative history of the section confirms this view.

From the very nature of the problem which involves the determination of literally an endless number of indi-

individual commodities, and from this general language used by Congress, it is most logical to conclude that Congress intended the Commission to establish the line of demarcation between those commodities having a farm origin that are to be exempt and those which are to move in regulated transportation. It is almost beyond imagination to think of any possible provision of law that by its very terms and by the inherent characteristics of the situation to which it is addressed, would more obviously call for a pattern of administrative interpretation than does Section 20² (b) (6) of the Interstate Commerce Act. If, after viewing the language of the Section in the light of the complexities of the situation with which it deals, there is any doubt as to this, the presence of the Section as part of an act providing a comprehensive scheme of regulation for one of the largest American industries should remove any vestige of doubt. When too, it must never be forgotten that in 1940 Congress passed the National Transportation Policy which issued a firm mandate to the Commission to interpret and administer each and every section of all four parts of the Interstate Commerce Act so as to provide the nation with a sound and flourishing transportation system.

Even superficial analysis makes it apparent that the job of interpreting and administering the agricultural exemption is one that deals with a great deal more than abstract or theoretical definition of the term. The interpretation to be given the term must take into account an almost limitless number of practical considerations, relationships between commodities and the processes to which they are subjected, and, perhaps most important of all, the proper meshing of the exception with the other sections of the act. It would seem, therefore, that any attempt to deal with the Section on a piecemeal basis—that is to determine independently whether a particular commodity is covered by the exemption—would almost certainly be doomed to failure. The history of the litigation before the

courts and the Commission where this was attempted proves this to be the case.

Moreover, the very procedure of piecemeal determination is itself incapable of resolving the uncertainty and confusion which exist in this area because, by its very nature, the decision must come after the act. The possibility of achieving a favorable interpretation as a result of litigation is unsatisfactory as a basis upon which a motor carrier is to determine whether or not to transport a particular commodity and whether or not to apply for authority to do so.

Not only would it seem virtually impossible to deal intelligently with the exemption on a piecemeal basis, but it would also seem to be equally unsatisfactory to attempt to arrive at any interpretation without a rich and deep-rooted background into the many facets of the problem. Experience with, and fundamental understanding of, the many ramifications involved would seem to be an essential foundation upon which to build a pattern of interpretation that would carry out the objectives of Congress, not only as stated in the exemption, but throughout the broad framework of the Act of which the agricultural exemption is one small but important part.

● For these reasons, it becomes apparent that the interpretation of Section 203(b)(6), in the first instance, was intended to be, and must be, lodged with the Commission. Only the Commission, with its wide experience and its procedures for broad scale investigation, is equipped to consider the interrelationships among innumerable commodities and, in turn, the relationship of their transportation to the pattern of transportation regulation as a whole.

It was precisely this type of broad scale interpretation that was undertaken by the Commission in its investigation and determinations in *Determination of Exempted Agricultural Commodities*, 52 M.C.C. 511 (1951). The *Determination Case* provided the needed solution, but, until the determinations made therein are authoritatively established

as proper, it cannot be wholly effective.* Meanwhile, the process of piecemeal interpretation has continued in the courts and conflicting decisions in the circuits have tended to add to and magnify the difficulties of the problem already referred to. Without in anyway condemning these several courts, for admittedly the problems with which they have been confronted have been intricate and without landmarks to guide in their solution, their opinions dealing with the agricultural exemption have not been very helpful in dispelling the confusion and uncertainty surrounding the application of the exemption.

The basic fault lies in the fact that there has been no guiding principle to aid the courts in their attempt to formulate a proper interpretation of Section 203(b)(6). Were such a principle to be authoritatively enunciated, a great deal of the existing confusion would disappear. Unless this court sees fit to announce such a controlling principle the future seems to be one filled with the same time consuming and piecemeal litigation that has occurred in the past.

These Appellant Railroads believe that such a principle does exist and that its application to the agricultural exemption is both necessary and proper. This principle is a simple one and is one which has been announced by this court in such cases as *Piedmont & N. Ry. Co. v. Commission*, 286 U.S. 299 (1932); *MacDonald v. Thompson*, 305 U.S. 263 (1938); *Gregg Cartage Co. v. United States*, 316 U.S. 74 (1942) and *Crescent Express Lines v. United States*, 320 U.S. 401 (1943). It is to the effect that because of the great scope and complexities of the regulatory scheme of the Interstate Commerce Act and the many and extensive powers of the Commission which over the years have steadily been increased, all exemptions from regulation should be

* The pressing need for a review of the *Determination Case*, which will establish authoritatively the properness of the Commission's findings therein, is set forth in the Statement of Jurisdiction in Case No. 8285, filed concurrently herewith.

strictly construed so as to preserve and enhance regulation rather than whittling it down or eroding it.

A review of the decision of the court is now on the basis of the above principle and according to the Commission's findings the weight to which they are entitled in view of the Commission's responsibility for the interpretation of the exemption would show that fresh and frozen dressed poultry are not agricultural commodities. But, more than that, such a review would establish important standards for the guidance of courts in the future which would go a long way toward putting an end to the confusion and uncertainty which presently are preventing the agricultural exemption from taking its proper place in the regulatory scheme.

CONCLUSION

The Appellant Railroads respectfully submit that the Supreme Court has jurisdiction to review this decision by direct appeal from the District Court under the statutory provisions and the cases cited above. The appellants further submit that the issues presented by this case are of the requisite substantiality to warrant decision by the Supreme Court. The primary question in this case involves the interpretation which is properly to be placed upon Section 203(b)(6) of the Interstate Commerce Act which exempts motor carriers transporting agricultural commodities from the economic regulatory powers of the Interstate Commerce Commission. More specifically, it involves the question of whether or not fresh and frozen dressed poultry are "agricultural commodities" within the meaning of this Section.

But the importance of this Court's review is not limited to such a narrow issue. Rather, a review by this Court would necessarily serve as a guide for the future and thus

alleviate the confusion and uncertainty which presently surround the interpretation of the exemption and threaten the effectiveness of the Commission's administration of the entire scheme of transportation regulation.

Respectfully submitted,

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Filed: June 17, 1955.

CERTIFICATE OF SERVICE

I, Carl Helmetag, Jr., one of the attorneys for the Class I Railroads, intervening defendants (appellants) herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing Statement of Jurisdiction on the several parties to this action as follows:

1. On the plaintiff, Frozen Food Express, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to its attorneys of record, Carl L. Phinney and Leroy Hallman, First National Bank Building, Dallas, Texas;

2. On the Secretary of Agriculture, as intervening plaintiff, by mailing copies in duly addressed envelopes, with postage prepaid, to his attorneys of record, Charles W. Bucy, Walter D. Matson, and Harry Ross, Office of the Solicitor, U. S. Department of Agriculture, Washington 25, D. C.;

3. On the Interstate Commerce Commission, defendant, by mailing copies in duly addressed envelopes, with postage prepaid, to its attorneys of record, Edward M. Reidy and Leo H. Pou, at the office of the Interstate Commerce Commission, Washington 25, D. C.

4. On the United States of America, defendant, by mailing copies in duly addressed envelopes, with postage prepaid, to its attorneys of record, Honorable Stanley N. Barnes, Assistant Attorney General, and Messrs. James E. Kilday and Charles S. Sullivan, Jr., U. S. Department of Justice, Washington 25, D. C.; by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to its attorney of record, Malcolm R. Wilkey, United States Attorney, Houston, Texas; and by mailing a copy in a duly

addressed envelope, with postage prepaid, to the Solicitor General, Department of Justice, Washington 25, D. C.

5. On the several intervening defendants, by mailing copies in duly addressed envelopes, with postage prepaid, to their respective attorneys of record, to wit: David G. MacDonald and Francis W. McInerny, Commonwealth Building, 1625 K Street, N. W., Washington 6, D. C.; Peter T. Beardsley and Fritz Kahn, c/o American Trucking Associations, Inc., 1424 Sixteenth Street, N. W., Washington 6, D. C.; Dale C. Dillon and Clarence D. Todd, 944 Washington Building, Washington 5, D. C., and by mailing copies in duly addressed envelopes, with air mail postage prepaid, to Rollo E. Kidwell, 301 Empire Bank Building, Dallas, Texas; and Lee Reeder, 1012 Baltimore Avenue, Kansas City 5, Missouri.

This 17th day of June, 1955.

CARL HELMETAG, JR.

APPENDIX "A"

LIST OF CLASS I RAILROADS

The below listed Railroads are the individual carriers which, together, are designated in the Statement of Jurisdiction as "Class I Railroads," the intervening defendants appealing herein. When used, the terms "Class I Railroads" or "Appellant Railroads" include each of these named Railroads:

The Atchison, Topeka & Santa Fe Railway Company
Atlantic Coast Line Railroad Company
Chicago & Illinois Midland Railway Company
Chicago and Northwestern Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railroad Company
The Denver and Rio Grande Western Railroad Company
Duluth, South Shore and Atlantic Railway Company
(C. L. Solether, Trustee)
Elgin, Joliet and Eastern Railway Company
Florida East Coast Railway Company (John W. Martin, Trustee)
Fort Dodge, Des Moines & Southern Railway Company
Great Northern Railway Company
Green Bay & Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
The Kansas City Southern Railway Company
Midland Valley Railroad Company
The Minneapolis & St. Louis Railway Company

Minneapolis, St. Paul & Sault Ste. Marie Railroad
Company.

Missouri-Kansas-Texas Railroad Company

Missouri Pacific Railroad Company (Guy A. Thompson,
Trustee)

The Nashville, Chattanooga & St. Louis Railway

Northern Pacific Railway Company

St. Louis-San Francisco Railway Company

St. Louis Southern Railway Company

Seaboard Airline Railroad Company

Southern Railway Company

Southern Pacific Company

The Texas and Pacific Railway Company

Toledo, Peoria & Western Railroad

Union Pacific Railroad Company

Wabash Railroad Company

The Western Pacific Railroad Company

APPENDIX "B-1"

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 8285

and

Civil Action No. 8396.

FROZEN FOOD EXPRESS,

Plaintiff,

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES,

Intervening Plaintiff,

v.

UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION,

Defendants,

COMMON CARRIER IRREGULAR ROUTE CONFERENCE OF AMERICAN TRUCKING ASSOCIATION, ET AL.,

Intervening Defendants.

Phinney and Hallman (Carl L. Phinney), of Dallas, Texas;
for Plaintiff.

Stanley N. Barnes, Assistant Attorney General, and
Charles W. Bucy, Associate Solicitor, of Washington,
D. C.; for Intervening Plaintiff.

Malcolm R. Wilkey, United States Attorney, of Houston,
Texas, and Edward M. Reidy, Chief Counsel of Inter-
state Commerce Commission, of Washington, D. C.;
for Defendants.

Callaway, Reed, Kidwell & Brooks (Rollo E. Kidwell), of Dallas, Texas;

Todd, Dillon & Curtiss (Clarence D. Todd), of Washington, D. C.;

Peter T. Beardsley, of Washington, D. C.;

Baker, Botts, Andrews & Shepherd (J. C. Hutcheson, III and Edwin N. Bell), of Houston, Texas;

Macleay & Lynch (Francis W. McInerney), of Washington, D. C.;

Reeder, Gisler & Griffin (Lee Reeder), of Kansas City, Missouri;

J. W. Nisbet, of Chicago, Illinois;

Carl Helmetag, Jr., of Philadelphia, Pa.;

Rice, Carpenter & Carraway, of Washington, D. C.;

Fulbright, Crooker, Freeman, Bates & Jaworski (W. H. Vaughan, Jr.), of Houston, Texas; for Intervening Defendants.

JANUARY 26, 1955.

Before HUTCHESON, *Chief Circuit Judge* and CONNOLLY and KENNERLY, *District Judges*.

CONNALLY, *District Judge*:

Filed pursuant to Secs. 1336, 1398, and 2321-2325, of Title 28; to Sec. 1009, of Title 5; and to Sec. 305(g), of Title 49, U. S. C. A., each of the foregoing civil actions attacks and seeks to restrain enforcement of an order of the Interstate Commerce Commission. Presenting the same question of law, and substantial identity of parties, the actions were consolidated for hearing and trial. The question for determination is whether a number of different commodities, as later noted herein, all of which have their origin on the farm or ranch, fall within the scope of the so-called agricultural exemption (Sec. 303(b)(6)) of Part II of the Interstate Commerce Act (Title 49, U. S. C. A., Sec. 301,

et seq.). By terms of the last-mentioned statute, motor vehicles used in carrying property consisting of "ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)", are exempt from Interstate Commerce Commission control (save for minor exceptions not here pertinent). The plaintiff in each of the consolidated actions, being a trucking concern holding a certificate of convenience and necessity from the Commission, desires to carry some or all of the commodities in question, unrestricted by the terms of its own certificate, or by other Commission regulation. Hence the plaintiff, supported to a considerable extent in this contention by the Secretary of Agriculture of the United States, urges upon the Court a broad interpretation of the statutory language "agricultural commodities (not including manufactured products thereof)", which would have the net result of enlarging this so-called agricultural exemption. The Commission, on the other hand, and those intervenors who align themselves with the Commission, urge upon us that most of the commodities in question, by virtue of the treatment and processing which they receive, either have lost their identity as "agricultural commodities", or have become "manufactured products thereof". The result of this argument is drastically to restrict the scope of the exemption.

CIVIL ACTION 8285.

In June, 1948, the Interstate Commerce Commission, of its own motion, instituted a proceeding, being MC-C-968 in its docket, in the nature of an investigation, to determine the meaning and scope of the term "agricultural commodities (not including manufactured products thereof)", as used in the above-mentioned statute. The proceeding was widely noticed in the affected trades and industries. Many interested parties, including the Secretary of Agriculture of the United States, the Commissioners of Agri-

culture from a number of the States, associations of shippers, motor carriers, and others, intervened. After extended hearings, during which much expert testimony was offered as to the manner and method of cleaning, preparing, packaging, and otherwise processing the various commodities in question, the Commission issued its report and order entitled "Determination of Exempted Agricultural Commodities" (52 I. C. C. Reports, Motor Carrier Cases, 511-566). In such report, the Commission announced its definition of such statutory term,¹ which definition it then undertook to apply to the various commodities under consideration, and enumerated those which it found to come within the statutory language, and those which it found to fall without.² Thereupon, the proceeding was terminated and removed from the Commission docket.

1. "In No. MC-C-968, we find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) of the Interstate Commerce Act means: Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey), but not including any such products or commodities which, as a result of some treatment, have been so changed as to possess new forms, qualities, or properties, or result in combinations."

2. "We find that the term 'agricultural commodities (not including manufactured products thereof)' as used in section 203 (b) (6) includes: (1) fruits, berries, and vegetables which remain in their natural state, including those packaged in bags or other containers, but excluding those placed in hermetically sealed containers, those frozen or quick frozen, and those shelled, sliced, shredded, or chopped up; (2) fruits, berries, and vegetables dried naturally or artificially; (3) seeds, including inoculated seeds, but not seeds prepared for condiment use or those which have been deawned, sacrificed or otherwise treated for seeding purposes; (4) forage, hay, straw, corn and sorghum fodder, corn cobs, and stover; (5) (a) hops and castor beans, and (b) leaf tobacco, but excluding redried tobacco leaf; (6) raw peanuts, and other nuts, unshelled; (7) whole grains, namely, wheat, rye, corn, rice, oats, barley and sorghum grain, not including dehulled rice and oats, or pearled barley; (8) (a) cotton in bales or in the seed, (b) cottonseed and flaxseed, and (c) ramie fiber, flax fiber, and hemp fiber; (9) live poultry, namely, chickens, turkeys, ducks, geese, and guineas; (10) milk, cream, and skim milk, including that which has been pasteurized, standardized milk, homogenized milk and cream, vitamin 'D' milk, and vitamin 'D' skim milk; (11) wool and mohair, excluding cleaned and scoured wool and mohair; (12) eggs, including oiled eggs, but excluding: whole or shelled eggs, frozen or dried eggs, frozen or dried egg yolks, and frozen or dried egg albumin; (13) (a) trees which have been felled and those trimmed, cut to length, peeled or split, but not further processed, and (b) crude resin, maple sap, bark, leaves, Spanish moss, and greenery; (14) sugar cane, sugar beets, honey in the comb, and strained honey."

The plaintiff Frozen Food Express was not a party to the proceeding before the Commission. By amended complaint filed here July 12, 1954, plaintiff alleges that it desires to carry agricultural commodities (not including manufactured products thereof) for hire, to and from all points within the United States, irrespective of the limitations imposed by its own certificate; that the report of April 13, 1951, deprives plaintiff of its right to do so. Alleging that the action of the Commission, in entering the report in question, was arbitrary, capricious and unreasonable, that it constituted an abuse of discretion and a violation of the Commission's statutory powers, the plaintiff here seeks an injunction to restrain the Commission and the United States from enforcing or recognizing the validity of such report; restraining interference with the plaintiff's proposed transportation of such agricultural commodities (not including manufactured products thereof), and seeks an order of this Court declaring the report of the Commission of April 13, 1951, to be null and void.

The Secretary of Agriculture has intervened, denominating himself "Intervening Plaintiff". He makes common cause with plaintiff in contending that a number of commodities³ are within the exemption. Several trucking associations, and some sixty southern and western railroad companies, have intervened. These intervenors take a contrary view, and support the report of the Interstate Commerce Commission.

We are of the opinion that the action may not be maintained, and must be dismissed, for the reason that the report and order of the Interstate Commerce Commission of April 13, 1951, is not an "order" subject to judicial re-

3. (1) Slaughtered meat animals and fresh meats;
- (2) Dressed and cut-up poultry, fresh or frozen;
- (3) Feathers;
- (4) Raw, shelled peanuts and raw shelled nuts;
- (5) Hay chopped up fine;
- (6) Cotton linters and cottonseed hulls;
- (7) Frozen cream, frozen skim milk, and frozen milk;
- (8) Seeds which have been deawned, sacrificed, or inoculated."

view under any of the statutes cited. The proceeding before the Commission was not an adversary one. The order which initiated it purported to do no more than direct that an investigation be made of the meaning of the statutory language. Notice was given only to the public. When the final report and order was forthcoming some two years later, the only "order" entered was one discontinuing the proceeding and removing it from the Commission's docket. The question is controlled by *U. S. v. Los Angeles R. R. Co.* (273 U. S. 284), holding a very similar "order" of the Interstate Commerce Commission which found, after an investigation, the value of certain railroad properties, not to be subject to review. The language of Mr. Justice Brandeis, speaking for a unanimous Court there, aptly describes the order in issue here:

"The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation. This so-called order is merely the formal record of conclusions reached after a study of data collected in the course of extensive research conducted by the Commission, through its employees. It is the exercise solely of the function of investigation."

The proponents of jurisdiction here rely upon *Columbia Broadcasting System v. U. S.* (316 U. S. 407). It was there held that an order of the Federal Communications Commission promulgating certain rules and regulations requiring that the Commission deny a license to broadcasting stations under certain circumstances, was subject to judicial review, upon a showing by the complaining party of strong equitable considerations. This authority is clearly

distinguishable from the present case. The order there in question was entered in the exercise of the agency's rule-making power. Such orders, together with those fixing rates and those determining controversies before the administrative body, have long been recognized as subject to review (*U. S. v. Los Angeles R. R. Co.*, supra).

Likewise, the complaining party there showed an immediate and continuing threat of irreparable injury if the order were not reviewed. It is not so here. The statement of plaintiff that it desires to carry for hire most or all of the commodities on the Commission's proscribed list, and that if it does so, the Commission likely will seek injunctive relief to restrain plaintiff, shows no basis for the intervention of a court of equity. Plaintiff will have an adequate remedy in the event of such interference.

It follows that Civil Action 8285 will be dismissed.

Civil Action 8396:

A complaint was filed December 23, 1953, with the Interstate Commerce Commission by East Texas Motor Freight Lines, Gillette Motor Transport, Inc., and Jones Truck Lines, Inc., charging that Frozen Food Express was and had been engaged in transporting fresh and frozen dressed poultry, and fresh and frozen meats, and meat products, for hire, between points in interstate commerce not authorized by its certificate of convenience and necessity. Frozen Food readily admitted that it had been so engaged, but defended on the theory that such products all were within the agricultural exemption. The Commission found each of these products not to be within the exemption, and ordered Frozen Food Express to cease and desist from such unauthorized transportation. The present proceeding was filed by Frozen Food Express to review that order.⁵

While the present action was pending in this Court, the Secretary of Agriculture of the United States filed with

⁵ Plaintiff has abandoned the contention that meat products are within the agricultural exemption, and this commodity will not be further considered here.

the Commission his petition for leave to intervene, pursuant to Sec. 1291, of Title 7, U. S. C. A. This request was denied; and the Secretary appears here as "Intervening Plaintiff", contending (1) that the proceedings before the Commission were null and void by reason of the failure of the Commission to notify him of the pendency thereof (Sec. 1291(a), of Title 7, U. S. C. A.); (2) that the proceedings should be remanded to the Commission by reason of its error of law in having denied him leave to intervene; and (3) that the cease and desist order should be enjoined by reason of the alleged error of the Commission in holding fresh and frozen meats, and fresh and frozen dressed poultry, to be beyond the limits of the agricultural exemption.

The rail carriers and trucking associations which intervened in Civil Action 8285, also appear in this action. They support the Commission, and oppose the position taken by the plaintiff and the Secretary of Agriculture.

Armour & Company, being engaged at various points in the United States in the slaughter of livestock and the killing, dressing, and sale of poultry, has intervened, urging that dressed poultry is an exempt commodity, that meat is not.

The position taken by the Secretary of Agriculture that the proceeding before the Commission was null and void in its entirety by reason of the failure of the Commission to give him notice thereof, need not long detain us. The proceeding there was not one with respect to "rates, charges, tariffs, and practices" relating to the transportation of farm products (and hence was not one of which the Secretary was entitled to notice under the statute (Secs. 1291 and 1622, of Title 7, U. S. C. A.). *U. S. v. Pa. R. R. Co.* (242 U. S. 208); *B. & O. R. R. Co. v. U. S.* (277 U. S. 292); *Mo. Pac. R. R. Co. v. Norwood* (283 U. S. 249). The Commission likewise did not commit an error of law in denying the Secretary's Petition of Intervention, filed there while the present proceeding was pending here.

Most able and exhaustive treatment is given the question now before us, in so far as it concerns dressed poultry, by Judge Gavin of the United States District Court for the Northern District of Iowa, in *I. C. C. v. Kroblin* (113 F. Supp. 599, aff. 212 F. 2d 555, cert. den. Oct. 14, 1954). Reviewing the long struggle between the Interstate Commerce Commission in its efforts to restrict the application of the exemption in question, and the Department of Agriculture and others in seeking to expand it; reviewing the legislative history of the Motor Carrier Act of 1935, and various proposed amendments thereto; and considering the congressional intent which prompted the insertion of the agricultural exemption, Judge Gavin concluded that dressed poultry constituted an "agricultural commodity", and did not constitute a "manufactured product thereof". Hence, such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry.

Counsel for the Commission urges that this Court should disregard the *Kroblin* case, on the argument that the only question before us is one of the adequacy of the evidence before the Commission. It is said that the order which was entered was one within the general purview of the Commission's authority; and that if its findings are supported by "substantial evidence", this Court has no alternative but to leave it undisturbed. While we do not quarrel with such statement as a general proposition of law, the argument is not convincing in its application to the present record. The primary facts before the Commission were without dispute and were the subject of stipulation. Reduced to simplest form, they showed that before a chicken or duck became "dressed poultry", the bird was killed, his feathers and entrails removed, he was chilled, and in some cases frozen, packaged, etc. In addition, such "facts" consisted of evidence of so-called "expert" nature, that this treatment or processing of the chicken or duck rendered him a "manufactured product".

It is apparent that there is only one ultimate finding called for, namely, whether under the type of processing reflected by the record, the product falls within the statutory definition. The question then is a mixed one of law and fact, calling for the application of the processes of legal reasoning and of principles of statutory construction. The fact that the Commission's findings are supported by an "expert" who gives his opinion that a dressed chicken is a manufactured product, does not foreclose the question, nor remove it from the scope of judicial review. *Baumgartner v. U. S.* (322 U. S. 665); *Lehmann v. Acheson* (206 F. 2d 592, 3C); *Galena Oaks Corp. v. Schofield* (— F. 2d —, 5C, Dec. 29, 1954, as yet unreported).

In our opinion, fresh and frozen meat does not fall within the category either of "ordinary livestock" or of "agricultural commodities", and hence is not within the exemption. Since the enactment of Part II of the Interstate Commerce Act in 1935, motor vehicles used exclusively in carrying "livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof)", have been exempt. By amendment in 1940, the term "ordinary" was inserted immediately before the word "livestock". The term "ordinary livestock" is defined in Sec. 20(11) of the Act as "all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses".

Referring only to the live animals, "ordinary livestock" may not be tortured to include the carcasses of slaughtered meat animals, or the meat which is the product of butchering. Meat has been regarded generally in the industry as a controlled commodity for some twenty years. Congress has dealt with the agricultural exemption on many occasions. Considering the ease with which the Congress might have added appropriate language to evidence its intent to exempt fresh or frozen meat from Interstate Commerce Commission control, if it so desired, the absence of such language indicates that no such intent was entertained.

Nor may meat, fresh or frozen, be considered an "agricultural commodity" for present purposes. The exemption has treated the live meat animal in a separate generic class from "agricultural commodity" since the enactment of the statute; and if the live animal, on entering the slaughter pen or the packing house, is not an "agricultural commodity", we are unable to see how he becomes one on emerging therefrom in the form of beef or pork. The Commission was correct, in our opinion, in holding fresh and frozen meat to be non-exempt.

The enforcement of the order of the Interstate Commerce Commission, MC-C-1605, East Texas Motor Freight Lines, Inc., et al. v. Frozen Food Express, is enjoined and restrained in so far as said order interfered with, enjoins or restrains the plaintiff Frozen Food Express from transporting fresh and frozen dressed poultry in interstate commerce (when the motor vehicles used in carrying such poultry are not used for carrying any other property or passengers for compensation). Other relief sought by plaintiff is denied.

Clerk will notify counsel.

Done at Houston, Texas, this 26th day of January, 1955.

JOSEPH C. HUTCHESON JR.

Chief Judge, Fifth Circuit

BEN C. CONNOLLY

United States District Judge

J. M. KENNERLY

United States District Judge

*Concurring in Part and Dissenting
in Part*

TRUE COPY I CERTIFY

V. BAILEY THOMAS, *Clerk*

ATTEST:

By EDWARD A. BLYTHE,

Deputy Clerk

KENNERLY, *District Judge*:

Concurring in part and dissenting in part.

I concur with all the foregoing opinion except the decision in Civil Action 8396 with respect to fresh meat and frozen meat. As to that I respectfully dissent.

I think all of Section 303(b) should be given a broad and liberal construction, and that Section 303(b)(6) should be construed as including fresh meat and frozen meat. I think we should not only follow the reasoning of both the District Court and Court of Appeals in the Kroblin case with respect to dressed poultry and frozen dressed poultry, but that what is said is also applicable to fresh meats and frozen meats.

J. M. KENNERLY, *Judge*

Filed 26 day of Jan., 1955.

V. BAILEY THOMAS, *Clerk*

By RUBY MILLER, *Deputy*

TRUE COPY I CERTIFY

ATTEST:

V. BAILEY THOMAS, *Clerk*

By EDWARD A. BLYTHE,

Deputy Clerk

APPENDIX "B-2"

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION No. 8396

FROZEN FOOD EXPRESS, ET AL.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL.,

Defendants.

Judgment

This action, to enjoin and set aside an order of the Interstate Commerce Commission, having come on for final hearing on November 16, 1954, before a duly constituted three-judge District Court, convened pursuant to Sections 2284 and 2321-2325, Title 28, United States Code, consisting of the undersigned judges; and the Court having considered the pleadings and evidence, and the briefs and arguments of counsel for the respective parties, and being fully advised in the premises; and having on January 26, 1955, filed herein its opinion, containing its findings of fact and conclusions of law; now, in accordance with the said opinion, findings, and conclusions, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

(1) The defendants, the United States of America and the Interstate Commerce Commission, be, and they hereby

are, enjoined and restrained from enforcing the order of the said Commission entered July 13, 1954, in a proceeding docketed by the Commission as No. MC-C-1605, and entitled "East Texas Motor Freight Lines, Inc.; et al. v. Frozen Food Express", insofar as the said order requires the said Frozen Food Express to cease and desist from transporting, or interferes with its transportation of, fresh and frozen dressed poultry in interstate commerce for compensation unless the motor vehicle used in the carrying of such poultry is at the same time being used to carry for compensation passengers or other property not within the exemption provided in section 203(b)(6) of the Interstate Commerce Act (49 U. S. C. 303(b)(6)); and

(2) All other relief sought by the plaintiffs herein, including the Secretary of Agriculture as intervening plaintiff, be, and the same hereby is, denied.

This the 23rd day of February, 1955.

/s/ JOSEPH C. HUTCHESON, JR.,
Chief Judge, United States
Court of Appeals for the
Fifth Circuit.

/s/ THOMAS M. KENNERLY,
United States District Judge.

/s/ BEN C. CONNALLY,
United States District Judge.

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Supreme Court of the United States

October Term, 1955.

No. 164.

AKRON, CANTON & YOUNGSTOWN R. R. CO., et al.,

Appellants.

FROZEN FOOD EXPRESS, et al.

On Appeal from the United States District Court for the
Southern District of Texas, Houston Division.

**BRIEF OF THE APPELLANT RAILROADS IN REPLY
TO THE MOTION TO AFFIRM FILED ON BEHALF
OF THE UNITED STATES OF AMERICA AND
EZRA TAFT BENSON, SECRETARY OF
AGRICULTURE.**

MARGARET P. ALLEN,

EDWIN N. BELL,

JOSEPH H. HAYS,

CARL HELMETAG, JR.,

JAMES W. NISBET,

CHARLES P. REYNOLDS.

*Attorneys for Appellant
Railroads.*

1740 Suburban Station Building,
Philadelphia 4, Pennsylvania.

Filed: August 30, 1955.

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IN THE
Supreme Court of the United States.

—
OCTOBER TERM, 1955.
—

No. 164.
—

AKRON, CANTON & YOUNGSTOWN R. R. CO., ET AL.,
Appellants,

v.

FROZEN FOOD EXPRESS, ET AL.

—
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.
—

**BRIEF OF THE APPELLANT RAILROADS IN REPLY
TO THE MOTION TO AFFIRM FILED ON BEHALF
OF THE UNITED STATES OF AMERICA AND
EZRA TAFT BENSON, SECRETARY OF AGRICUL-
TURE.**

—
**I.
STATEMENT.**

By a motion served on counsel for the Appellant Railroads by United States mail on August 10, 1955, the United States of America and Ezra Taft Benson, Secretary of Agriculture, (hereinafter sometimes referred to as the Government), asked this Court to affirm the order of the Court below which set aside in part an order of the Interstate Commerce Commission. The part of the order of the Commission which was set aside by the Court below, as stated

by the Government in its motion to affirm, directed that a motor carrier, Frozen Food Express, cease and desist transporting without a certificate of public convenience and necessity, dressed or frozen poultry which that carrier had been transporting without an appropriate certificate under the belief that such Commodities were within the so-called agricultural exemption contained in Section 203(b)(6) of the Interstate Commerce Act. In ordering Frozen Food Express to cease and desist from transporting dressed or frozen poultry, the Commission was relying on the provisions of Section 203(b)(6) of the Interstate Commerce Act which plainly indicate that the term "agricultural commodities," while defining an area of for-hire motor carrier transportation that is exempted from economic regulation, is one of severely limited scope, for the term "agriculture commodities" is specifically limited by the words "not including manufactured products thereof".

The Commission, after careful study of the problem, concluded that since dressed and frozen poultry undergo a great deal of processing, most of which is done in large industrial plants operated and manned by non-agriculture people, these commodities are manufactured products of agriculture commodities and not agriculture commodities as such. When this conclusion of the Commission was examined by the Court below, that Court, largely on the basis of the *Kroblin* case,¹ ordered the Commission's ruling respecting dressed and frozen poultry to be set aside.

The immediate question before this Court by reason of the Government's Motion to Affirm is whether or not the order of the Court below should be affirmed without consideration of oral arguments and briefs to be filed by the several interested parties and without any expression of opinion by this Court on the soundness of the legal analysis used by the Court below in setting aside the particular part

1. *Interstate Commerce Commission v. Allen E. Kroblin*, 113 F. Supp. 599 (N. D. Iowa, 1953), aff'd, 212 F. 2d 555 (8th Cir., 1954), cert. denied, 348 U. S. 836 (1955).

of Commission's order. It is the view of these Appellant Railroads that the granting of the Motion to Affirm would extend and make more difficult a problem that has been bothersome to the Commission in administering the Interstate Commerce Act, and which has caused great and widespread uncertainty, confusion, and economic stress among those engaged in transportation activities throughout the nation and to those shipping and handling an almost limitless number of commodities that regularly move in Interstate Commerce, all to the detriment of the establishment and maintenance of a strong and flourishing national transportation system. Further, it is the belief of these Appellant Railroads that a denial of the Motion to Affirm, resulting in the presentation of oral arguments and briefs, would provide the basis for a determination by this Court that would go a long way toward bringing to an end much expensive, time consuming, and uncertainty producing, litigation.

As will be explained, the situation which gives rise to the instant litigation that is now before this Court is one which is peculiarly appropriate for a pronouncement by this Court of a pattern for interpreting the involved statutory language so that the necessity for new litigation will be greatly lessened, if not totally eliminated. Therefore, these Appellant Railroads must earnestly ask that the motion to affirm be denied and that this Court note probable jurisdiction of the case.

II. ARGUMENT.

A. The Motion to Affirm Is Manifestly Inconsistent With the Position Taken by the Government in the Companion Cases Which Are Before This Court.

It might appear from the tenor of the Government's Motion to Affirm that there is a relatively simple issue involved in this litigation that has already been amply examined by the Court below making further examination by this Court unnecessary and unwarranted. But this is definitely not so.

To properly consider the Motion to Affirm, the issue as to whether the Court below was right in holding that dressed and frozen poultry are agricultural commodities must be viewed and brought into focus against a background of a litigation before the Commission which brought before the Court below not only the dressed and frozen poultry question, and the companion cases now before this Court, which had their beginnings in the litigation before the Commission. If this is done, it will become obvious, these Appellant Railroads believe, that the Government's position in asking this Court to affirm the ruling below is a completely inconsistent one and, as will also be shown, a completely unsound and legally unsupportable one.

Without repeating in detail what has been said in the Railroad's Jurisdictional Statements filed in Numbers 161, 164, it is obvious that the agricultural exemption contained in Section 203(b)(6) of the Interstate Commerce Act is not self-executing and of necessity must be interpreted to determine whether a particular item having an agricultural origin, but subjected to some processing, falls into the category of "agricultural commodities," or the category of "manufactured products thereof." And it takes no vivid or unduly sensitive imagination to think of the vast number

of items that will fall into a twilight zone. Further, because of the limitless number of commodities involved, and the almost imperceptible shades of gradation between one and another, it is equally clear that any attempt on a piecemeal basis to work out a rational and workable interpretation of the Section as it applies to a particular item would be doomed to failure. In short, the Section is one that is bound to cause confusion, uncertainty and highly technical distinctions if applied undependably to separate commodities. The Section is one, therefore, which urgently calls for a pattern of interpretation which is easy of application, sensible in result, and reflective of the over-all objectives of Congress in enacting the legislation of which it is a small, but most important, segment. Perfection of result with respect to individual commodities is less to be desired than general all around workability.

The Commission having found this to be the case after several piecemeal attempts to apply the Section, commenced a general investigation which led to the formulation of interpretative rules. These interpretative rules, which were incorporated in the Commission's report in, *Determination of Exempted Agricultural Commodities*, 52 M. C. C. 511 (1951), sometimes referred to as the *Determination* case, outlined the principles to be followed in applying the Section to particular commodities. The report did not stop at that point, but went on and, by applying the rules laid down, classified a considerable number of commodities as falling into the exempt or the non-exempt group. In making its classifications, the Commission placed dressed and frozen poultry in the list of manufactured items because of the extensive off-the-farm processing to which such items are subjected. In today's economic scheme, the raising of poultry is still an agricultural pursuit, but the dressing and freezing of these farm products is in every respect an industrial or manufacturing activity. The processing of the birds for market is done in large industrial plants that employ workers who are no closer to the farm than those who work in canning

factories. Most of the work is done on an assembly-line basis and there is an extensive use of stabilized machinery.

Frozen Food Express, a motor carrier that had been handling, without a certificate of convenience and necessity, several items which the Commission found to be in the non-agricultural group in the *Determination* case, in an appropriate proceeding ^{was} ordered ^{by the Commission} the ~~carrier~~ to cease and desist from handling dressed and frozen poultry and other items until it secured a certificate. The sole basis for this holding of the Commission was the findings made in the *Determination* case.

Frozen Food Express, aggrieved by this order of the Commission, subjected it to Court test in the three-judge Court that sat below and at the same time, in order to test the underlying findings made in the *Determination* case, also asked the Court below to review that matter.

The Court below ruled that the Commission's order in the *Determination* case was non-reviewable, but, at the same time, ruled that the Commission's order respecting the transportation of dressed or frozen poultry by Frozen Food Express—which was grounded solely on the findings made in the *Determination* case—was reviewable. Upon review, the Court below set aside that order of the Commission.

Frozen Food Express, the Commission, interested associations of motor carriers, and these Appellant Railroads, in appeals numbered respectively 158, 159, 160, 161, have asked this Court to review the order of the Court below holding that the *Determination* case was not reviewable. The Government, while not joining in these appeals, argued below that the Commission's order was reviewable and has not, so far as these Appellant Railroads have learned, opposed these appeals in this Court. Thus, it can be said that the Government acquiesced in the position of the other Appellants and does not oppose a complete review by this

2. *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 62 M. C. C. 646 (1954).

Court of the *Determination* case, such review to include, it must be supposed, oral argument and briefs.

But at the same time the Government, while acquiescing in a complete review of the all-comprehensive *Determination* case, has asked that review be foreclosed with respect to dressed and frozen poultry which is one of the many items covered by the *Determination* case. Apart from the inconsistency of this, the course of action asked for by the Government might be productive of the most unusual result of having this Court, in what are in every sense companion cases, reverse the ruling made on the Motion to Affirm upon the conclusions reached after hearing arguments and studying the briefs in the *Determination* case. Logically and practically, the better course to follow is for this Court to withhold ruling on the dressed and frozen poultry items until it has had an opportunity to decide what should be done with the *Determination* case. If it is decided to review the *Determination* case, the dressed and frozen poultry items will be encompassed in that review. On the other hand, if this Court decides that the Court below was right and the *Determination* case is non-reviewable, it can then decide whether the Court's below ruling respecting dressed and frozen poultry was appropriate or otherwise.

B. The Government's Motion to Affirm Is Improperly Supported by Cases Arising Under Statutes Other Than the Interstate Commerce Act.

At pages 5, 6, and 7 of the Government's Motion to Affirm it is argued that the holding of the Court below respecting the status of dressed and frozen poultry under Part II of the Interstate Commerce Act is consistent with holdings of this Court involving the classification of items as "manufactured" under other statutes and, for that reason, the Motion to Affirm should be granted. If this summary of the position of the Government as set forth in this part of the motion is a correct one, then its statement alone

should be enough to demonstrate the inadequacy of the Government's contentions.

The Interstate Commerce Act is one of the most comprehensive pieces of regulatory legislation ever enacted by Congress. As such, it governs, deals with, and touches practically every activity of the many and varied enterprises that are brought under the Commission's jurisdiction. The delicate interrelationships between the several sections of this gigantic piece of legislation, and their effects on the most intricate and complicated workings of the regulatory processes as they affect an industry that is in some senses of the variety of public utilities and in other senses fully competitive, makes it completely inappropriate to attempt to interpret the individual sections of this Act according to precedents governing entirely different legislation.

In this connection, it would seem to be readily apparent that the cases cited on pages 6 and 7 of the Motion to Affirm do not support the proposition that poultry which has been dressed and frozen is not "manufactured." The word "manufactured" will be subject to different interpretations depending upon the way it is used in a particular statute and upon the purpose for which the particular statute was passed. In the *Dudley* and *Wiegmann* cases cited by the Government, the issue was whether or not certain articles were "manufactured" so as to be subject to an import duty. In determining such an issue, not only the wording of the statute, but its purpose and the general rules of statutory construction applicable to it would be factors to be considered. For example, in considering such a statute, if there is a doubt as to whether or not a particular article is subject to a duty, such doubt must be resolved in favor of the importer. *Hartranft v. Wiegmann*, 121 U. S. 609 (1887).

Entirely different considerations are brought into play in interpreting Section 203(b)(6) of the Interstate Commerce Act. The descriptive words of the exemption were

purposely left indefinite so that the Section could be interpreted by the Commission in accordance with the policy and other provisions of the Act. 79 Cong. Rec. 12205, 12207. However, there was some indication by Congress of the policy which led to the enactment of the exemption in that it was primarily to benefit farmers who hauled their own farm products and not for the benefit of commercial truckers. 79 Cong. Rec. 12213-12215. In addition, the rule of statutory construction which governs the interpretation of this exemption is that exceptions from the provisions of remedial legislation are to be strictly construed. *Piedmont & N. Ry. Co. v. Commission*, 286 U. S. 299 (1932); *McDonald v. Thompson*, 305 U. S. 263 (1938). Thus, it seems clear that decisions holding certain articles to be "manufactured" under a variety of statutes, embodying entirely different governmental policies, are neither binding nor even persuasive in determining how exceptions for the regulating powers of the Commission should be interpreted.

C. The Kroblin Case, Relied Upon by the Government as Support for Its Motion to Affirm, of Itself Demonstrates the Need for Complete Review by This Court of the Ruling of the Court Below.

It cannot be gainsaid that the court below, in holding that dressed and frozen poultry are "agricultural commodities" as this term is used in Section 203(b)(6) of the Interstate Commerce Act, did so entirely upon the *Kroblin* case. Referring to the *Kroblin* case, Judge Connally said:

"Judge Gavin concluded that dressed poultry constituted an 'agricultural commodity' and did not constitute a 'manufactured product thereof'. Hence such commodity was within the exemption. It is sufficient to state that we agree with those conclusions as to fresh and frozen dressed poultry."

Because of this and the Government's very heavy reliance on the *Kroblin* case to support its Motion to Affirm,

the issue before this Court in this particular appeal in the final analysis is narrowed very greatly. The primary consideration of this Court should be whether the simple affirmation of the decision below will bring an end to a problem that to date has been the source of most unsatisfactory litigation. If it will not, and a complete review of the holding below—and incidentally of the *Kroblin* case—will provide a pattern for bringing to an end extensive litigation, then it is most appropriate, and indeed necessary, these Appellant Railroads believe, that such complete review be afforded.

It is, of course, clear that review of the lower Court's holding in the instant case is not precluded by the fact that this Court denied certiorari in the *Kroblin* case. In the first place, it has frequently been stated that the denial of a writ of certiorari imports no expression of opinion upon the merits of the case. *Atlantic Coast Line R. Co. v. Powe*, 283 U. S. 401 (1931); *Sunal v. Large*, 332 U. S. 174 (1947). Secondly, although this court may have felt at the time of the *Kroblin* case that the time was not ripe for consideration of the agricultural exemption, it would seem that under the circumstances which presently exist this Court should at this time undertake a full review. This Court now has before it the *Determination* case, which raises the whole question of the interpretation to be placed upon the exemption and thus has an opportunity to examine the question on a comprehensive rather than a piecemeal basis.

A careful reading of the *Kroblin* case establishes beyond refutation that the interpretation of the agricultural exemption when attempted on a piecemeal basis has resulted in decisions both by the Commission and by the courts which are conflicting, confusing, and beyond reconciliation. Further, the *Kroblin* case makes it clear almost beyond argument that the legislative history of Section 203(b)(6) provides little or no help in interpreting the Section. That these observations are correct is demonstrated by the fact that neither the courts nor the Commis-

sion have found the *Kroblin* case to be authoritative concerning subsequent questions involving the exempt status of other commodities. *Southwest Trading Co. v. U. S.*, 208 F. 2d 708 (5th Cir. 1953); *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 62 M. C. C. 646 (1954); and *Allen Kroblin, Inc., Extension—Dairy Products*, Docket No. MC-C-70252 (Sub. No. 3) (I. C. C. April 1955).

The crux of the problem, the point at which divergence of opinion begins, is brought to light by the lower court's discourse in the *Kroblin* case. There the court bases its decision upon what it believes to be the proper principle to be used in interpreting Section 203(b)(6) of the Act and reverses the ruling of the Commission because it was the view of the court, in contradistinction to that of the Commission, that the agricultural exemption should be given a broad or liberal interpretation, that is, all doubts should be resolved in favor of the exempt status.

The Commission, on the other hand, was of the opinion that the exemption in Section 203(b)(6), being one contained in remedial legislation, should, as this Court has said with respect to other exemptions in the Interstate Commerce Act, be narrowly construed. In the words of the District Court in the *Kroblin* case (113 F. Supp. 599-630):

"The construction or interpretation of Section 203(b)(6) contended for by the Interstate Commerce Commission would be highly restrictive of the scope of Section 203(b)(6) so far as poultry is concerned."

A review of the cases in the several circuits dealing with the agricultural exemption indicates that in some instances the courts have approved the Commission's rulings respecting particular commodities, and in doing so have approved the Commission's use of the strict construction of the exemption, e.g., *I. C. C. v. Weldon*, 90 F. Supp. 873 (W. D. Tenn. 1950), aff'd, 188 F. 2d 367 (6th Cir. 1951), cert. denied, 342 U. S. 827 (1951); *Southwest Trading Co. v. U. S.*, 208 F. 2d 708 (5th Cir. 1953). In other instances, courts have disapproved the Commission's holdings

upon the basis that the Commission improperly strictly construed the exemption rather than applying a liberal interpretation, e.g., *I. C. C. v. Kroblin*, *supra*; *I. C. C. v. Yeary Transfer Co.*, 104 F. Supp. 245 (E. D. Ky. 1952), *aff'd*, 202 F. 2d 151 (6th Cir. 1953).

Regardless of which construction—i.e., the strict or the liberal—is to be utilized, it necessarily follows that one of the two must be discarded if the Commission is to sensibly administer the Act. But the Commission cannot be expected to decide which of conflicting court cases, each of the same authority, is to be followed. Direction must come from above.

The Commission's action in applying a strict construction to Section 203(b)(6) is supported by the decisions of this Court interpreting other exemptions from the Interstate Commerce Act. *Piedmont & N. Ry. Co. v. I. C. C.*, 286 U. S. 299 (1932); *McDonald v. Thompson*, 305 U. S. 263 (1938); *Gregg Cartage Co. v. U. S.*, 316 U. S. 74 (1942); *Crescent Express Lines v. U. S.*, 320 U. S. 401 (1943); whereas the decisions of the courts that have overruled the Commission are directly contrary to this established line of cases. If this Court affirms, the Court below without going into the question of the proper rules for construing Section 203(b)(6), the Commission, those in the transportation industry, and those that utilize regulated carriers and carriers claiming exemption from regulation, will be left in the dark as to whether this Court is merely affirming the result of the lower court's decision, or is putting its stamp of approval on the principles of law on which that decision rests. The confusion that presently exists will go on.

The time has come when the need is manifest for an authoritative pronouncement as to which rule of construction is proper, and the matter is patently ripe for determination. These Appellant Railroads, that have a vital and increasingly important stake in the question, respectfully ask that this Court deny the motion to affirm and that it note probable jurisdiction of the matter so that the case can be fully briefed and argued.

III.

THE RELIEF REQUESTED.

For the reasons more fully developed before, these Appellant Railroads most respectfully ask that the motion to affirm filed on behalf of the United States of America and Ezra Taft Benson, Secretary of Agriculture, be denied and that this Court note probable jurisdiction of the matter.

Respectfully submitted,

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IV.**CERTIFICATE OF SERVICE.**

I, Carl Helmetag, Jr., one of the attorneys for the Appellant Railroads, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served copies of the foregoing Brief of the Appellant Railroads on the several parties to this action as follows:

1. On Frozen Food Express, by mailing copies in duly addressed envelopes, with air-mail postage prepaid, to its attorneys of record, Carl L. Phinney, Esq. and Leroy Hallman, Esq., First National Banking Building, Dallas, Texas.

2. On the Secretary of Agriculture, by mailing copies in duly addressed envelopes with postage prepaid, to his attorneys, Honorable Robert L. Farrington, Honorable Neal Brooks, and Honorable Donald A. Campbell, United States Department of Agriculture, Washington 25, D. C.

3. On the Interstate Commerce Commission, by mailing copies in duly addressed envelopes with postage prepaid to its attorney, Honorable Leo H. Pou, Office of the Interstate Commerce Commission, Washington 25, D. C.

4. On the United States of America, by mailing copies in duly addressed envelopes, with postage prepaid, to its attorneys, Honorable Simon E. Sobeloff, the Solicitor General of the United States, Honorable Stanley N. Barnes, Assistant Attorney General, and Honorable Daniel Friedman, Special Assistant to the Attorney General, United States Department of Justice, Washington 25, D. C. and by mailing a copy in a duly addressed envelope, with air-mail postage prepaid, to its attorney or record, Honorable Malcolm R. Wilkey, United States Attorney, Houston, Texas.

5. On several interested parties, by mailing copies in duly addressed envelopes with postage prepaid to their respective attorneys of record, to wit: David G. MacDonald, Esq. and Francis W. McInerny, Esq., Commonwealth Building, 1625 K Street, N. W., Washington 6, D. C.; Peter T. Beardsley, Esq., and Fritz Kahn, Esq., c/o American Trucking Associations, Inc., 1424 Sixteenth Street, N. W., Washington 6, D. C.; Dale C. Dillon, Esq., and Clarence D. Todd, Esq., 944 Washington Building, Washington 5, D. C., and by mailing copies in duly addressed envelopes, with air mail postage prepaid, to Rollo E. Kidwell, Esq., 301 Empire Bank Building, Dallas, Texas; and Lee Reeder, Esq., 1012 Baltimore Avenue, Kansas City 5, Missouri.

This 30th day of August, 1955.

CARL HELMETAG, JR.